

In the Matter of:                     )  
Application for                         )  
Certification for the                  ) Docket No. 97-AFC-1  
HIGH DESERT POWER PROJECT       )

FRIDAY, FEBRUARY 18, 2000

9:30 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Laurie, Presiding Member

STAFF PRESENT

Stanley Valkosky, Hearing Officer

Terry O'Brien, Adviser to Chairman Keese

Caryn Holmes, Staff Counsel

Richard Buell, Project Manager

Marc Sazaki

REPRESENTING THE APPLICANT

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Thomas M. Barnett, Vice President and Project  
Manager

Andrew C. Welch, P.E., Project Director  
Constellation Power  
High Desert Power Project LLC  
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Newport Beach, CA 92660

Michael Carroll  
Lawfirm of Latham and Watkins

INTERVENORS PRESENT

Gary A. Ledford, Builder  
Jess Ranch  
11000 Apple Valley Road  
Apple Valley, CA 92308

Robert Almond

Jack Beinschroth

ALSO PRESENT

Stephen Adams, Staff Counsel  
California Department of Fish and Game  
Environmental Services  
330 Golden Shore, Suite 50  
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Alan De Salvio  
Mojave Desert Air Quality Management District

Charles R. Fryxell  
Air Pollution Control Officer  
Mojave Desert Air Quality Management District

John Roberts  
City Manager, City of Victorville  
Executive Director, Southern California Logistics  
Airport Authority

Randy Hill  
General Manager, Victor Valley Water District

William Huyck

Peggy Sartor

Larry Huber, President  
Victor Valley Water District

Hammelone Sonnenfeld

Esther Privett

Barbara Howard

Ron Leatz

Terry Flint

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## 1 P R O C E E D I N G S

2 1:00 p.m.

3 PRESIDING MEMBER LAURIE: Before you do  
4 that I would ask everybody in the audience to  
5 check your cell phones. We do not want cell phone  
6 interruption. If you need it on, turn it to  
7 vibrate, please.

8 Mr. Valkosky.

9 HEARING OFFICER VALKOSKY: Thank you,  
10 Commissioner Laurie. Today is the evidentiary  
11 hearing for a limited purpose on the High Desert  
12 Power Project. To my right is Commissioner Robert  
13 Laurie, Presiding Member of this Committee. To my  
14 left is Mr. Terry O'Brien, who is Adviser for  
15 Chairman Keese, who has been appointed as the  
16 Second Member of the Committee. My name is Stan  
17 Valkosky. I'm the Hearing Officer for the  
18 Committee.

19 First order of business is I'd like the  
20 parties to introduce themselves beginning with the  
21 applicant, Mr. Thompson.

22 MR. THOMPSON: Thank you. My name's  
23 Allan Thompson; I'm CEC Project Counsel. To my  
24 immediate right is Mr. Tom Barnett of  
25 Constellation, the Project Director and Sponsor.



1 To his right is Mr. Andy Welch, also with  
2 Constellation. And to my immediate left is Mr.  
3 Mike Carroll of the lawfirm of Latham and Watkins.

4 HEARING OFFICER VALKOSKY: Thank you.  
5 Mr. Buell.

6 MR. BUELL: Yes. My name is Richard  
7 Buell, I'm the Project Manager for the staff. And  
8 to my left is Caryn Holmes. And in the audience  
9 we have Mr. Marc Sazaki, who will be testifying on  
10 biological resources.

11 HEARING OFFICER VALKOSKY: Mr. Adams.

12 MR. ADAMS: Steve Adams, Department of  
13 Fish and Game, Staff Counsel. And I'll be here  
14 mainly asking a few questions and answering  
15 questions, perhaps, that the Committee Members  
16 might have.

17 We are not presenting witnesses today.

18 HEARING OFFICER VALKOSKY: Okay. Mr.  
19 Ledford.

20 MR. LEDFORD: Gary Ledford, Intervenor.  
21 My principal concern is water resources.

22 HEARING OFFICER VALKOSKY: Okay. Thank  
23 you. By way of background the Committee reopened  
24 the evidentiary record in this case and scheduled  
25 today's hearing in an order of notice February 1st

1 of this year.

2 The record is being reopened for the  
3 limited purpose of receiving evidence on only the  
4 following items.

5 The topic of air quality; we want to  
6 examine the sufficiency of the emission reduction  
7 credits obtained by the applicant.

8 The topic of biological resources. The  
9 area of inquiry is a correct monetary amounts for  
10 the mitigation specified in condition of  
11 certification BIO-7. Applicant has offered  
12 additional evidence concerning its control of the  
13 proposed project site, so we'll hear that under  
14 site control.

15 On the topic of dry cooling we will  
16 receive supplemental economic information.

17 And finally, insofar as the water  
18 agreement is concerned, the Committee has reopened  
19 to receive into evidence the final aquifer storage  
20 and recovery agreement. And this will include the  
21 consistency of the terms of that agreement with  
22 the proposed soil and water conditions of  
23 certification, any potential growth-inducing  
24 impacts associated with the water agreement, and  
25 any specific changes which the parties may propose

1 in relation to suggestions made by Mr. Ledford in  
2 his comments on the Presiding Member's Proposed  
3 Decision.

4 Documents pertinent to today's hearing  
5 include testimony filed by the applicant in its  
6 motion to reopen the proceeding on January 13th.  
7 Applicant then filed additional prepared testimony  
8 of Andy Welch, which was docketed on February  
9 10th.

10 We have received an executed copy of the  
11 aquifer storage and recovery agreement dated  
12 January 18, 2000.

13 Staff has filed testimony on February  
14 10th followed by an errata on February 15th.

15 We also have prepared testimony and a  
16 proposed witness and exhibit list from Mr. Ledford  
17 which was filed on the 10th of this month.

18 Applicant has also filed a motion to  
19 exclude proffered testimony on the 14th, followed  
20 by a reply from Mr. Ledford dated on the 16th.

21 And finally, we have comments from the  
22 California Department of Fish and Game.

23 In addition, I have prepared a list of  
24 exhibits proposed by the parties which have been  
25 identified in the various filings. And I have

1 distributed this to the parties. And there were  
2 copies on the table up here.

3 Procedures we'll follow today. Based  
4 upon the filed materials there's apparently a  
5 degree of confusion over the scope of today's  
6 hearings and the witnesses who will appear.

7 The Committee will reiterate that it has  
8 convened today's hearing for the limited purposes  
9 mentioned previously. We have not reopened the  
10 record to hear all matters already addressed  
11 during the September and October 1999 hearings,  
12 and discussed in the Presiding Member's Proposed  
13 Decision.

14 Thus, the only witnesses we expect to  
15 testify today are those who have sponsored  
16 supplemental testimony addressing matters within  
17 the scope of the order on reopening. Based on the  
18 filings these witnesses are:

19 On behalf of the applicant, Mr. Welch.  
20 On behalf of the staff, Mr. Buell and Mr. Sazaki.  
21 And on behalf of Mr. Ledford, Mr. Ledford,  
22 himself, Mr. Almond and Mr. Beinschroth.

23 Additionally, as stated in the January  
24 27th conference, the Committee will accept  
25 testimony on behalf of the Mojave Desert Air

1       Quality Management District concerning the  
2       sufficiency of emission reduction credits, as well  
3       as from a representative of the Victor Valley  
4       Water District concerning the aquifer storage and  
5       recovery agreements.

6               When we get to the evidentiary  
7       presentations the parties shall first present the  
8       direct testimony of their respective witnesses,  
9       who will then be subject to cross-examination,  
10      redirect and recross, as appropriate.

11             Members of the public may, of course,  
12      offer unsworn public comment on any of the matters  
13      addressed today. The way I would prefer to handle  
14      this is as we approach the conclusion of the topic  
15      area if a member of the public has any comment on  
16      that particular topic, that would be an  
17      appropriate time to make it.

18             I understand there could be some  
19      scheduling difficulties, and I will also accord  
20      the members of the public an opportunity at the  
21      end of today's proceeding to offer any public  
22      comment on the matters covered.

23             Are there any questions?

24             Okay. Before we begin the evidentiary  
25      presentations I'd like to address the matter of

1 the motion to exclude certain exhibits filed by  
2 the applicant.

3 Mr. Thompson, I'll give you a maximum of  
4 five minutes to explain your motion. Mr. Ledford,  
5 you can have a similar time to respond to  
6 applicant's motion. Staff and Fish and Game will  
7 have an opportunity to comment as they may deem  
8 appropriate.

9 Mr. Thompson.

10 MR. THOMPSON: Thank you, Mr. Valkosky,  
11 I don't think I'll use the majority of the five  
12 minutes.

13 Applicant took particular note of the  
14 order reopening evidentiary record and notice of  
15 evidentiary hearing. That document was very  
16 specific in the topics that the Committee would  
17 consider at today's hearing. And in fact, in the  
18 order in paragraph two, the Committee indicated,  
19 and I quote, "has indicated at the July 27  
20 conference we will reopen the evidentiary record  
21 for the" in bold, underlined "limited purpose" end  
22 of bold and underline, "of receiving evidence only  
23 on the following items." Then it listed the  
24 items.

25 Exactly the same as you outlined not

1 five minutes ago, Mr. Valkosky, with the exception  
2 that the water agreement discussion said any  
3 potential growth-inducing impacts associated with  
4 the term of the water agreement.

5 Second, we went back to the transcript  
6 and found that the order reopening the evidentiary  
7 record mirrors the discussion in the transcript  
8 wherein the Committee gave the exact same guidance  
9 to the parties and the public.

10 And so we took those two documents  
11 together and reviewed the proffered testimony of  
12 Mr. Ledford, and found that to -- and we concluded  
13 that there were a number of topic areas that had  
14 been raised in Mr. Ledford's testimony that had  
15 been covered a number of times previously and were  
16 not included or contemplated in the order by this  
17 Committee.

18 Therefore, we move that that testimony  
19 be excluded, and not heard today.

20 HEARING OFFICER VALKOSKY: Thank you,  
21 Mr. Thompson.

22 Mr. Ledford.

23 MR. LEDFORD: Well, I guess when we come  
24 to these hearings we get different impressions on  
25 what was said. I've read the transcript, as well

1       and I don't disagree that the purpose of this  
2       hearing, as you've said, is for the limited  
3       purpose of addressing a contract that we haven't  
4       seen heretofore, and conditions that we haven't  
5       seen heretofore.

6               And the growth-inducing impacts which I  
7       have called growth-inducing impacts in previous  
8       times called cumulative impacts, I think, you'll  
9       find in the testimony today that they do combine.

10              The testimony that we have proffered of  
11       the witnesses, I mean there's specific testimony  
12       in their prepared testimony addressing the growth-  
13       inducing impacts.

14              But to get to that point we have to have  
15       a background. And what I've attempted to do in  
16       the proffered testimony is to examine the  
17       witnesses on their background and their knowledge  
18       of the water issues up here, and why that the  
19       growth-inducing or cumulative impacts of the  
20       issues we're going to address today are important.

21              I did a reply to their motion. I  
22       reviewed the law relative to evidence that can be  
23       proffered, and testimony that can be proffered.  
24       And I believe that what we have submitted in  
25       proffered testimony complies with the rules, with



1 the law. And it certainly fits into our  
2 presentation on what growth-inducing impacts are.

3 HEARING OFFICER VALKOSKY: That conclude  
4 your statement?

5 MR. LEDFORD: Yes, sir.

6 HEARING OFFICER VALKOSKY: Thank you,  
7 sir.

8 Does staff have any comment?

9 MS. HOLMES: Staff does not have a  
10 comment on this topic.

11 HEARING OFFICER VALKOSKY: Mr. Adams,  
12 Fish and Game.

13 MR. ADAMS: Fish and Game has no  
14 comment.

15 HEARING OFFICER VALKOSKY: The Committee  
16 will take a brief recess now, no longer than ten  
17 minutes, to consider the matter. We'll reconvene  
18 approximately 10:00.

19 (Brief recess.)

20 HEARING OFFICER VALKOSKY: During the  
21 recess the Committee has considered all of the  
22 exhibits identified on the document entitled,  
23 Identification of Proposed Exhibits.

24 And before we issue the ruling, Mr.  
25 Ledford, for your benefit I'd like you to note

1       that the materials that have been docketed in this  
2       proceeding are, in fact, part of the  
3       administrative record, and can be and are and have  
4       been considered by the Committee in formulating  
5       its proposed decision. And the additional  
6       documents can be and will be considered today.

7               That having been said, there is a  
8       distinction, however, between the items in the  
9       administrative record and the items in the hearing  
10      record.

11             Hearing record items are typically those  
12      that are offered by witnesses competent to sponsor  
13      them, and within the scope of the matters of  
14      concern to the Committee.

15             The chief difference is that while the  
16      matters in the administrative record may be used  
17      to explain, expand and enhance the understanding  
18      of the Committee in its decision-making process,  
19      only the matters offered into the evidentiary  
20      record can, in fact, solely form the basis for a  
21      finding as necessary.

22             That having been said, and after  
23      examining the items identified, we're going to  
24      rule as follows:

25             We will not admit as evidentiary

1 exhibits those items identified on the exhibit  
2 list as numbers 147 through 167. All of these  
3 items have been docketed. Some of the items,  
4 specifically Committee rulings and things, are a  
5 part of the record, are not something which anyone  
6 can really offer into evidence.

7 And moreover, each of these items, with  
8 the exception of the briefs, predate the September  
9 and October 1999 hearings. Exhibits 166 and 167,  
10 that is your briefs, are in the nature of  
11 argument, are not susceptible to being considered  
12 as probative evidence. But your arguments have  
13 been considered and will be reconsidered in any  
14 revised proposed decision that the Committee  
15 issues.

16 Therefore, we will not admit those items  
17 identified as exhibits 147 through 167 into the  
18 evidentiary record.

19 Your proposed documents, which we have  
20 identified as exhibits 171 and 173, relate, in our  
21 estimation, solely to local political matters,  
22 specifically the Mojave Water Agency board  
23 elections held last November. This event is not  
24 relevant to the environmental impact of the  
25 proposed project, nor is it within the scope of

1 the record reopened today. Therefore, we will not  
2 consider exhibits 171 or 173 as part of the  
3 evidentiary record.

4 Similarly, portions of exhibit 168,  
5 which is the prepared testimony of Jack  
6 Beinschroth, and of exhibit 172, which is the  
7 prepared testimony of Bob Almond, relate to  
8 matters covered during the October hearings. And  
9 are similarly not within the scope of the present  
10 reopening.

11 Additionally, portions of these  
12 documents seek to address, again, local political  
13 matters, specifically the MWA election, and are  
14 not within the province of the concerns of this  
15 Committee.

16 As to exhibit 168, in the Committee's  
17 estimation the matters covered in questions 3 to  
18 7, 9 to 13, and 18 to 22 either address matters  
19 previously heard, are speculative, or are beyond  
20 the limited purposes of today's hearings. And are  
21 therefore not eligible for inclusion into the  
22 evidentiary record.

23 The responses, however, to questions 1,  
24 2 and 8 of exhibit 128 appear to be qualifying in  
25 nature. And the responses to questions 14 through

1 17 address the VVWD contract and growth-inducing  
2 impacts. These are relevant, and the testimony  
3 may be presented to that limited extent.

4 Regarding exhibit 172, it appears the  
5 responses to questions 4 to 11 cover matters  
6 previously heard and numbers 16 through 34 address  
7 election matters. As said, these are not  
8 relevant.

9 The responses, however to questions 1  
10 through 3, 12 through 15 and 35 through 38 do  
11 appear to address relevant matters. And the  
12 witness' testimony may be offered to that limited  
13 extent.

14 Finally, regarding exhibit 175, this is  
15 essentially Mr. Ledford's sponsorship of a news  
16 release from the Jet Propulsion Labs regarding  
17 future weather patterns. This matter, again, is  
18 beyond the scope of today's hearing. And, at  
19 best, would only have the weight of hearsay  
20 accorded to it. And could not independently  
21 sustain a filing. We note that it is docketed and  
22 will be treated accordingly, but it will not be  
23 admitted into the evidentiary record.

24 I believe that concludes the matters  
25 covered in the motions. Reply? Mr. Ledford.

1                   MR. LEDFORD: I think we might have  
2 missed exhibit 174, the ruling on that?

3                   HEARING OFFICER VALKOSKY: 174, that's a  
4 good point there, Mr. Ledford. Could you explain  
5 the purpose of exhibit 174? That's a consumptive  
6 use study.

7                   MR. LEDFORD: It's a new document that  
8 the Commission has not seen because it was only  
9 produced here in the last month. And it's a  
10 consumptive use study which indicates how much  
11 water the Mojave Water Agency needs in order to  
12 balance the basin.

13                  HEARING OFFICER VALKOSKY: Go off the  
14 record for a second.

15                   (Off the record.)

16                  HEARING OFFICER VALKOSKY: Okay, back on  
17 the record. Could you explain its relevancy to  
18 today's proceeding?

19                  MR. LEDFORD: The relevancy relative to  
20 the contract that we're talking about with Victor  
21 Valley Water District is the water storage  
22 agreement that is a supplemental part of that  
23 contract which ultimately has to be approved by  
24 the Mojave Water Agency, and it has not been  
25 approved.

1                   And the directors are going to have to  
2       consider the availability of water for this  
3       project in the consumptive use portion of it when  
4       that issue comes back before the Mojave Water  
5       Agency Board of Directors, which although it's  
6       been testified to in these hearings that there's  
7       draft agreements out there, to the best of my  
8       knowledge no such draft agreements even exist.

9                   HEARING OFFICER VALKOSKY: Right, but  
10      would that exhibit influence or otherwise change  
11      the fact that the availability of state water  
12      project water to the project is on an  
13      interruptible and annually reviewable basis --

14                  MR. LEDFORD: The purpose of this  
15      hearing is to evaluate the growth-inducing impacts  
16      from over-sized utility lines both to the project  
17      site, and to the project well site, what those  
18      growth-inducing impacts from the over-sized  
19      capacity of this project is.

20                  I have preached this for some time, that  
21      there's two projects here. One project, which is  
22      a project to get water to the project, treat it,  
23      put it in the ground and take it back. And those  
24      uses which is what we're talking about.

25                  And so I say, yes, it is very definitely

1       germane in relation to how those contracts are  
2       ultimately going to be approved by the other  
3       agencies that you have not seen contracts with. I  
4       do believe it's applicable.

5               HEARING OFFICER VALKOSKY: Okay, Mr.  
6       Thompson, your response?

7               MR. THOMPSON: I frankly don't care.  
8       The MWA is going to consider what it wants to  
9       consider when the contract is before it. And it  
10      can be things that are admitted into the record or  
11      things that are not admitted into the record.  
12      I'm not so sure that this is germane to our  
13      proceeding. But I don't think it really has much  
14      relevance.

15              HEARING OFFICER VALKOSKY: Okay, you  
16      said you really don't care. Does that mean you're  
17      not objecting to it?

18              MR. THOMPSON: I'm not objecting.

19              HEARING OFFICER VALKOSKY: Okay. Any  
20      other party objecting to it?

21              MS. HOLMES: Staff does not.

22              MR. ADAMS: No.

23              HEARING OFFICER VALKOSKY: There are no  
24      objections, Mr. Ledford, we'll receive 174. You  
25      may sponsor 174 during the water portion of



1       today's proceeding. Exhibit 170, I'm sorry for  
2       that. That was my oversight. That, again,  
3       appears overly remote.

4               MR. LEDFORD: I'm sorry, I think we're  
5       still missing 168 and 169. What is the ruling on  
6       those?

7               HEARING OFFICER VALKOSKY: No, exhibit  
8       168 we addressed. Portions of it are admissible.  
9       Not the portions --

10              MR. LEDFORD: I'm sorry, 169 and 170.

11              HEARING OFFICER VALKOSKY: All right,  
12       again, explain the purpose of exhibit 169?

13              MR. LEDFORD: 169, I believe, is the  
14       missing exhibit to the current proposed contract.  
15       Exhibit A to the Victor Valley Water District  
16       contract. If it's not the precise exhibit, it is  
17       a similar exhibit.

18              It actually is a portion of exhibit  
19       number 65 which was introduced into evidence on  
20       October 7th. And it's figure 1 out of exhibit 65.  
21       And we have blown that exhibit up for purposes of  
22       clarification, both for the testimony of Mr.  
23       Beinschroth, and we've also got a blown-up version  
24       of it for the public.

25              HEARING OFFICER VALKOSKY: Okay.

1 Mr. Thompson?

2 MR. THOMPSON: I guess, Mr. Valkosky, if  
3 it's part of exhibit 65, it's already in the  
4 record. And --

5 HEARING OFFICER VALKOSKY: That's  
6 correct, so it would be just illustrative purposes  
7 today, is that fundamentally what you're --

8 MR. LEDFORD: That's fundamentally what  
9 I'm --

10 HEARING OFFICER VALKOSKY: -- what  
11 you're offering it for?

12 MR. LEDFORD: Yes, sir.

13 HEARING OFFICER VALKOSKY: That's fine.  
14 We'll note that it is in the record as part of  
15 exhibit 65, and we'll allow you to use it to  
16 illustrate your points today. It will need not be  
17 admitted as a separate exhibit, though.

18 MR. LEDFORD: Exhibit B is --

19 HEARING OFFICER VALKOSKY: That's  
20 exhibit 170 that you're referring to now?

21 MR. LEDFORD: Exhibit 170 is the sewage  
22 treatment plant pipeline. And the sewage  
23 treatment plant pipeline is an 18-inch pipeline  
24 that runs parallel to the project site, is  
25 actually on the project's east boundary.

1           The pipeline is designed to carry some  
2       9000 acrefeet of water. It is currently proposed  
3       to carry 1500 acrefeet of water to a golf course.

4           It is our understanding that regardless  
5       of what the testimony in this hearing has been,  
6       that the High Desert Power people intend to use  
7       treated water in the treatment plant.

8           This pipeline is adjacent to their  
9       project. It is a current environmental project in  
10      the High Desert, and it should be considered as to  
11      its cumulative impacts or growth-inducing impacts,  
12      as it relates to this project.

13           HEARING OFFICER VALKOSKY: Mr. Thompson?

14           MR. THOMPSON: First of all, I think you  
15      can believe applicant in what they say.

16           Second of all, the conditions of  
17      certification specify what the project components  
18      are and what will be used.

19           To infer or say that we are going to do  
20      something other than what is contained in the  
21      testimony that has been sworn to, and what is  
22      described in the Committee's Presiding Member's  
23      Proposed Decision, I think, begs credibility.

24           This project, proposed by someone else,  
25      undoubtedly being approved by some other body, has

1       absolutely no relevance to this project  
2       whatsoever. And therefore I don't see how any  
3       probative value can be obtained from its  
4       admission.

5               HEARING OFFICER VALKOSKY: I'll take  
6       that as an objection.

7               MR. THOMPSON: That is an objection.

8               (Laughter.)

9               HEARING OFFICER VALKOSKY: Thank you.  
10       All right, --

11              MR. LEDFORD: May I have a follow-on to  
12       it?

13              HEARING OFFICER VALKOSKY: Mr. Ledford,  
14       does exhibit 170 deal directly with the over-  
15       sizing of the pipeline pursuant to the contract?

16              MR. LEDFORD: It deals with the  
17       cumulative impacts of growth inducement, combining  
18       the two projects together.

19              HEARING OFFICER VALKOSKY: But it is, in  
20       fact, a separate project, not --

21              MR. LEDFORD: It is --

22              HEARING OFFICER VALKOSKY: -- not  
23       appurtenant to the power plant?

24              MR. LEDFORD: We believe it's very  
25       pertinent to the power plant, and on the issue of

1       credibility --

2               HEARING OFFICER VALKOSKY:  Not being --  
3       let me rephrase that, not being certified as part  
4       of the High Desert Power Project?

5               MR. LEDFORD:  Not being certified as  
6       part of -- it is a -- I think as the testimony  
7       goes along today we may be able to see how that  
8       the water treatment facility and the water project  
9       are separate from the power project, and that is  
10      what we are talking about today.

11              HEARING OFFICER VALKOSKY:  No, what  
12      we're talking about today are any growth-inducing  
13      impacts logically and reasonably related to the  
14      facilities for which the applicant is seeking  
15      certification.  And that's really what we're  
16      talking about.

17              MR. LEDFORD:  My reading of staff's  
18      testimony indicates that there are many things  
19      about this part of the project that they have not  
20      studied that is not a part of this proceeding.

21              HEARING OFFICER VALKOSKY:  And we'll  
22      discuss that when we get to that point.

23              MR. LEDFORD:  And I think when we get to  
24      that point that we'll see how this part of this  
25      fits into that equation.

1 HEARING OFFICER VALKOSKY: Okay. At  
2 this point we'll reserve decision on exhibit 170  
3 till we get to the growth-inducing impacts. Okay?

4 MR. LEDFORD: Thank you.

5 HEARING OFFICER VALKOSKY: All right,  
6 are there any other matters on the motion?

7 Okay, with that we will now turn to the  
8 topic of air quality. Mr. Thompson.

9 MR. THOMPSON: Thank you very much.  
10 Applicant would like to call Mr. Andy Welch to the  
11 stand.

12 MR. WELCH: Do I need to be sworn? I've  
13 been sworn previously.

14 HEARING OFFICER VALKOSKY: Swear the  
15 witness, please.  
16 Whereupon,

17 ANDREW WELCH  
18 was called as a witness herein and after first  
19 being duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q Mr. Welch, would you please state your  
24 name and place of employ?

25 A My name is Andrew Welch and I'm employed

1 by Constellation Power.

2 Q And what are your duties and  
3 responsibilities for Constellation Power?

4 A I'm the Project Director for the High  
5 Desert Power Project, and have been working on the  
6 project for several years.

7 Q Would you please briefly describe your  
8 educational background?

9 A I'm a degreed engineer from Rutgers  
10 University College of Engineering, degree in  
11 mechanical engineering.

12 Q And how many years do you have  
13 experience in the power industry?

14 A I've been working in the independent  
15 power industry for 12 years.

16 Q Thank you. Am I correct that you are  
17 here today to sponsor exhibits 143 and 144?

18 A Yes.

19 Q And specifically with regard to air  
20 quality, in exhibit 143 there is material in there  
21 on the offsets, the emission reduction credits.  
22 Would you please briefly describe what is  
23 contained in the air section of exhibit 143?

24 A Certainly. In the air section 143 we  
25 have together, one, the option agreement with the

1 Southern California Logistics Airport Authority  
2 for the remainder of the offsets. At the  
3 previous hearings it was identified that we had  
4 the majority of them, but not 100 percent of what  
5 was required. This agreement takes the total up  
6 to 100 percent of what was required.

7 Additionally, we have attached all the  
8 relevant extensions to the previously submitted  
9 option agreements.

10 Q So your testimony today is that  
11 applicant has secured all required emission  
12 reduction credits for this project?

13 A That is correct.

14 MR. THOMPSON: That concludes Mr.  
15 Welch's testimony on the subject of air offsets  
16 portion of exhibit 143.

17 HEARING OFFICER VALKOSKY: Thank you,  
18 Mr. Thompson. Any cross?

19 MS. HOLMES: No cross from staff.

20 MR. ADAMS: No questions.

21 HEARING OFFICER VALKOSKY: Mr. Ledford,  
22 any questions?

23 MR. LEDFORD: No questions.

24 HEARING OFFICER VALKOSKY: Mr. Thompson,  
25 do you have a witness from the district, also?



1                   MR. THOMPSON: I'm not sure he's our  
2                   witness. The air district is independent, but I  
3                   think there is someone here for the air district.  
4                   Mr. DeSalvio, is that correct?

5                   HEARING OFFICER VALKOSKY: Would you  
6                   present that witness, please? Thank you, Mr.  
7                   Welch.

8                   MR. THOMPSON: We would be delighted to  
9                   present Mr. DeSalvio as a witness.

10                  HEARING OFFICER VALKOSKY: We'd like to  
11                  have you sworn, Mr. DeSalvio.  
12                  Whereupon,

13                                 ALAN DeSALVIO  
14                  was called as a witness herein and after first  
15                  being duly sworn, was examined and testified as  
16                  follows:

17                  MR. DeSALVIO: Alan DeSalvio, Air  
18                  Quality Engineer with the Mojave Desert AQMD.

19                                 DIRECT EXAMINATION

20                  BY MR. THOMPSON:

21                  Q     And, Mr. DeSalvio, are you familiar with  
22                  this application by High Desert Power Project and  
23                  the emission reduction credits information that  
24                  has been submitted in this record, is that  
25                  correct?

1           A     Yes.

2           Q     Has the district reached any conclusions  
3     with regard to the sufficiency of those credits?

4           A     Yes, the district has.  The district has  
5     determined that the project has -- the applicant  
6     has secured not only sufficient credits for the  
7     project, but also all the credits that were  
8     identified in the final determination of  
9     compliance executed by the MDAQMD.

10          Q     Do you have anything else to add, Mr.  
11     DeSalvio?

12          A     No.  Just to further clarify, those  
13     issues that we had raised in October have been  
14     resolved.

15                               EXAMINATION

16     BY HEARING OFFICER VALKOSKY:

17          Q     Mr. DeSalvio, when you say obtained, do  
18     you mean as acquired either by purchase or  
19     otherwise legally enforceable right, the title to  
20     these emission offset credits?

21          A     If I understand your question correctly,  
22     that's a very good point.  They have secured the  
23     ability to purchase when required to do so.  I  
24     don't believe they have actually purchased them.  
25     They have option contracts in every case.

1           The authority to construct does not  
2       require that they actually purchase the offsets  
3       until -- well, the condition is that they purchase  
4       them prior to beginning construction.

5           Q     Right, but again, right now, they have  
6       the legally enforceable right to purchase them?

7           A     First right of refusal for each set of  
8       credits, yes.

9           Q     All right, and these are a complete  
10      amount required for the project, correct?

11          A     In excess of, yes.

12          Q     In excess of. Thank you.

13                HEARING OFFICER VALKOSKY: Any  
14      questions?

15                MS. HOLMES: No questions.

16                HEARING OFFICER VALKOSKY: Mr. Adams,  
17      any questions? Mr. Ledford, any questions?

18                MR. LEDFORD: No questions.

19                HEARING OFFICER VALKOSKY: Mr. DeSalvio,  
20      thank you very much.

21                MR. THOMPSON: That concludes  
22      applicant's testimony in the area of air quality,  
23      sir.

24                HEARING OFFICER VALKOSKY: Staff?

25                MS. HOLMES: Staff will call Richard

1 Buell. He's already been sworn.

2 HEARING OFFICER VALKOSKY: Since we're  
3 refreshing everyone's oath, re-swear Mr. Buell,  
4 too.

5 Whereupon,

6 RICHARD BUELL  
7 was called as a witness herein and after first  
8 being duly sworn, was examined and testified as  
9 follows:

10 MS. HOLMES: Before I begin my direct of  
11 Mr. Buell I'd like to request that staff's  
12 testimony, which is currently identified as  
13 exhibit 146, be broken up into two parts. The  
14 reason for that is that the page numbers start  
15 over again when we reach the biology section. If  
16 they're not broken up into two parts, we'll have  
17 two page 5, 6, 7 of the same exhibit number.

18 So I think it would make sense to have a  
19 separate exhibit number given to the biological  
20 resources testimony.

21 HEARING OFFICER VALKOSKY: Okay, so  
22 let's break it up into 146A and 146B. And it is  
23 my understanding that your biological resources  
24 testimony will be 146B?

25 MS. HOLMES: That's fine.

1 HEARING OFFICER VALKOSKY: The rest will  
2 be 146A?

3 MS. HOLMES: That's fine.

4 HEARING OFFICER VALKOSKY: All right,  
5 we'll designate it that way.

6 MS. HOLMES: Thank you.

7 DIRECT EXAMINATION

8 BY MS. HOLMES:

9 Q Mr. Buell, do you have in front of you a  
10 copy of what's just been identified as exhibit  
11 146A?

12 A Yes, I do.

13 Q And was the air quality portion of that  
14 prepared by you or under your direction?

15 A Yes.

16 Q Are the facts contained in that  
17 testimony true and correct to the best of your  
18 knowledge?

19 A Yes, they are.

20 Q And do the opinions in that testimony  
21 represent your best professional judgment?

22 A Yes, they do.

23 Q Do you have any changes or corrections  
24 to the air quality portion of your testimony?

25 A No, I do not.

1           Q     Would you like to summarize your  
2     testimony, please?

3           A     Simply that I'd like to summarize it by  
4     stating that with the receipt of the contract  
5     information provided by the applicant on January  
6     14th and also on October 26th, staff believes the  
7     applicant has demonstrated that it has the right  
8     to obtain sufficient ERCs or offsets for the  
9     proposed project.

10          Q     Does that conclude your summary?

11          A     Yes, it does.

12                MS. HOLMES: Mr. Buell is available for  
13     cross-examination.

14                HEARING OFFICER VALKOSKY: Mr. Thompson.

15                MR. THOMPSON: No questions, other than  
16     an apology that the Crown Cork & Seal document was  
17     not included in apparently all of the documents  
18     that we initially sent out. And other than that,  
19     we have no questions of staff.

20                HEARING OFFICER VALKOSKY: Mr. Adams.

21                MR. ADAMS: No questions.

22                HEARING OFFICER VALKOSKY: Mr. Ledford.

23                MR. LEDFORD: Are we including the Crown  
24     Cork & Seal document as a part of this exhibit?  
25     Are we including that?

1 HEARING OFFICER VALKOSKY: That would be  
2 part of applicant's exhibit 143.

3 MR. LEDFORD: We are adding it to the  
4 exhibit?

5 HEARING OFFICER VALKOSKY: Mr. Thompson,  
6 as I understood, that was part of attachment 1 to  
7 exhibit 143, but it may not have been forwarded  
8 through all copies, is that correct?

9 MR. THOMPSON: I am on the service list,  
10 and my copy that my paralegal sent out, I got one,  
11 but apparently staff did not get one. So I can't  
12 tell you how many -- who got them and who didn't.  
13 So we resubmitted.

14 But, yes, I would like it included as  
15 part of 143.

16 HEARING OFFICER VALKOSKY: Okay, fine.  
17 Does that clarify it, Mr. Ledford?

18 MR. LEDFORD: Yes, it does.

19 HEARING OFFICER VALKOSKY: Okay. Are  
20 there any -- thank you, Mr. Buell. Are there any  
21 comments from any members of the public pertaining  
22 to the topic of air quality?

23 Sir, if you could identify yourself for  
24 the record and spell your last name, please.

25 MR. FRYXELL: Good morning. My name is

1 Charles L. Fryxell. I'm the Air Pollution Control  
2 Officer for Mojave Desert Air Quality Management  
3 District.

4 I just wanted to say that it's been a  
5 pleasure working with this Committee and your  
6 staff and the applicant on this project. It's a  
7 very exciting project for this area.

8 The applicant has been thoroughly  
9 cooperative in all the things that we have asked  
10 them to do. And they have completed all the  
11 requirements for the district, including the  
12 emission reduction credit purchases.

13 And we think it's a very good project  
14 and we'd like to see it go forward. Thank you.

15 HEARING OFFICER VALKOSKY: Thank you,  
16 Mr. Fryxell.

17 Any other comments on the topic of air  
18 quality? Okay, we'll close the record on that  
19 topic at this point.

20 Next topic is biological resources. Mr.  
21 Thompson, do you have a witness?

22 MR. THOMPSON: Yes, we do, thank you.  
23 Applicant would like to recall Mr. Andy Welch.

24 HEARING OFFICER VALKOSKY: Mr. Welch.

25 MR. LEDFORD: I didn't hear a motion to



1 enter that exhibit into the record, which I do  
2 have an objection to.

3 HEARING OFFICER VALKOSKY: It is part of  
4 exhibit 143. My assumption is that Mr. Thompson  
5 will attempt to move the whole exhibit into the  
6 record at once, because there are several  
7 different portions of it. Is that a correct  
8 assumption, Mr. Thompson?

9 MR. THOMPSON: That is correct. My  
10 intention was to move it after all of the subjects  
11 have been covered.

12 MR. LEDFORD: Fine.

13 HEARING OFFICER VALKOSKY: Okay?

14 MR. LEDFORD: Thank you.

15 HEARING OFFICER VALKOSKY: Mr. Thompson.

16 MR. THOMPSON: Thank you.

17 DIRECT EXAMINATION

18 BY MR. THOMPSON:

19 Q Mr. Welch, having been previously sworn,  
20 let's make this nice and short. Did applicant  
21 submit additional biological resources testimony  
22 in either exhibit 143 or 144?

23 A No.

24 Q Have you had a chance to review staff's  
25 biology testimony contained in 146B?

1           A     Yes.

2           Q     On behalf of the applicant do you accept  
3     and agree with that testimony of Mr. Sazaki?

4           A     Yes, I do.

5                     MR. THOMPSON:  Thank you very much,  
6     that's all we have.

7                     HEARING OFFICER VALKOSKY:  Questions for  
8     Mr. Welch?

9                     MS. HOLMES:  Not from staff.

10                    MR. ADAMS:  No questions.

11                    MR. LEDFORD:  No questions.

12                    HEARING OFFICER VALKOSKY:  Thank you,  
13     Mr. Welch.

14                    Staff.

15                    MS. HOLMES:  Staff would recall Mr. Marc  
16     Sazaki.

17     Whereupon,

18                                 MARC SAZAKI

19     was called as a witness herein and after first  
20     being duly sworn, was examined and testified as  
21     follows:

22                                 DIRECT EXAMINATION

23     BY MS. HOLMES:

24           Q     Good morning, Mr. Sazaki.  Do you have  
25     in front of you a copy of what was recently

1 identified as exhibit 146B?

2 A Yes, I do.

3 Q And was that testimony prepared by you  
4 or under your direction?

5 A Yes.

6 Q Do you have any corrections to make to  
7 that testimony at this time?

8 A No, I do not.

9 Q Are the facts contained in that  
10 testimony true and correct?

11 A Yes, they are.

12 Q And do the opinions represent your best  
13 professional judgment?

14 A Yes.

15 Q Can you please give a brief summary of  
16 your testimony.

17 A Shortly before the hearing in October  
18 where we were dealing with the area of biological  
19 resources, we had assumed we had an agreement with  
20 the federal agencies as to the level of habitat  
21 compensation for desert tortoise and Mojave ground  
22 squirrels.

23 And at that time the Bureau of Land  
24 Management decided that rather than adhere to the  
25 memorandum of understanding that they have with

1       the Department of Fish and Game regarding the  
2       disposition of habitat compensation lands, they  
3       decided that for any impacts to endangered  
4       species' habitat on federal lands, the  
5       compensation would go to the federal government.

6               And as a result of that, although  
7       everyone agreed that the total acreage for the  
8       second natural gas pipeline and the project was to  
9       be 1242.8 acres, we had to recompute the split and  
10      what the assignments would be for the state and  
11      the federal government.

12             And because of the short time involved  
13      we made some estimates based on the percentage of  
14      land that would be going to one party versus the  
15      other. And unfortunately that wasn't exactly the  
16      appropriate way for making that adjustment.

17             And subsequent to that hearing there was  
18      confusion as to exactly what the final disposition  
19      of the shares of the habitat compensation would  
20      be.

21             So to clarify this I re-ran the property  
22      analysis record software that was originally used  
23      to determine what the acquisition fees would be,  
24      the initial enhancement fees, as well as the  
25      endowment fees. And I did that for both,

1       excluding the 318 acres that the Bureau would be  
2       requiring, I did it for both the project with and  
3       without the 32-mile gas pipeline.

4               And the result of that process, I have a  
5       new set of estimates that will be used to base the  
6       assurances for the habitat compensation. And  
7       these I've included in my new proposed conditions  
8       of certification BIO-7.

9               Q     Thank you. Does that conclude your  
10      summary?

11              A     Yes, it does.

12              MS. HOLMES: Mr. Sazaki is available for  
13      cross-examination.

14              HEARING OFFICER VALKOSKY: Mr. Thompson.

15              MR. THOMPSON: We have no questions  
16      except for again we would like to thank Mr. Sazaki  
17      for taking upon himself the difficult task of  
18      wading through the formulas and the  
19      recalculations. And we would hope that he could  
20      get on an earlier flight, as today is his wife's  
21      birthday.

22              (Laughter.)

23              MR. SAZAKI: She'll appreciate that.

24              MR. THOMPSON: I'm sure. We have no  
25      other questions or comments.

1 HEARING OFFICER VALKOSKY: Mr. Adams.

2 MR. ADAMS: I have no questions.

3 HEARING OFFICER VALKOSKY: Mr. Ledford.

4 MR. LEDFORD: None.

5 EXAMINATION

6 BY HEARING OFFICER VALKOSKY:

7 Q Mr. Sazaki, are these figures consistent  
8 with those used in the federal biological  
9 assessment?

10 A Yes, they are, as to the acreages.

11 HEARING OFFICER VALKOSKY: Thank you,  
12 sir.

13 MS. HOLMES: Mr. Hearing Officer, at  
14 this point I'd like to move exhibit 146B entered  
15 into the record.

16 HEARING OFFICER VALKOSKY: Is there  
17 objection?

18 MR. THOMPSON: None from applicant.

19 MR. LEDFORD: None from --

20 HEARING OFFICER VALKOSKY: 146B is  
21 admitted.

22 Are there comments from any members of  
23 the public on the topic of biological resources?  
24 Fair enough.

25 Thank you, Mr. Sazaki. Close the record

1 on the topic of biological resources.

2 The next item on the agenda is site  
3 control. Mr. Thompson.

4 MR. THOMPSON: Thank you. Applicant  
5 would like to recall Mr. Andy Welch.

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Mr. Welch, having previously been  
9 sworn, --

10 A Yes.

11 Q Mr. Welch, in exhibit 143 applicant  
12 submitted a document entitled -- well, it was a  
13 lease with the Southern California Logistics  
14 Airport Authority, is that correct?

15 A Yes.

16 Q And what is the reason for the inclusion  
17 of that document in exhibit 143?

18 A To demonstrate for the Committee that  
19 the applicant does have site control.

20 Q And the term of that agreement?

21 A The lease agreement would be a 50-year  
22 lease.

23 MR. THOMPSON: Thank you very much, Mr.  
24 Welch. Mr. Welch is tendered for cross-  
25 examination.

1 MS. HOLMES: No questions.

2 MR. ADAMS: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Ledford?

4 MR. LEDFORD: Thank you.

5 CROSS-EXAMINATION

6 BY MR. LEDFORD:

7 Q Mr. Welch, did you negotiate this lease?

8 A I was involved in the negotiation.

9 Q And are you signature to the lease?

10 A No, I'm not.

11 Q Who is the signature to the lease?

12 A I believe that Mr. Barnett is.

13 Q And what is his position in this  
14 project?

15 A Mr. Barnett is the Vice President of the  
16 project, Vice President and Project Manager.

17 Q And does he work for Constellation  
18 Power, also?

19 A Yes, he does.

20 Q And is he a Vice President of  
21 Constellation Power, also?

22 A He is the Vice President of  
23 Constellation Power Development, which is --

24 Q A different company?

25 A It gets complicated. I guess



1       technically he is not an officer of Constellation  
2       Power, Inc.

3           Q     All right. Looking at the exhibit that  
4       you placed into a portion of the record, this  
5       appears to be a lease option agreement.

6           A     Correct.

7           Q     And included in this is several  
8       exhibits. I think the exhibits are from A to F.  
9       And I don't find any of the exhibits attached to  
10      what I've gotten as a part of this document. Are  
11      exhibits A to F available?

12          A     I don't know that we have them here.

13          Q     Well, with all due respect, your  
14      testimony before this Commission is that you have  
15      a lease, that is what your testimony is --

16          A     That's correct, and that lease was  
17      approved also at a public meeting of the Southern  
18      California Logistics Airport Authority.

19          Q     -- and the --

20          A     So it is a public document.

21          Q     -- and the lease is attached. But you  
22      have an option. The option agreement does reflect  
23      that there is a lease attached. But there is no  
24      lease attached.

25                   MR. LEDFORD: I respectfully submit that

1 without all of the documents that this doesn't  
2 rise to the level of a complete exhibit. And the  
3 public is entitled to see all the exhibits.

4 MR. WELCH: We submitted what we  
5 believed was relevant and necessary for the  
6 proceeding.

7 MR. LEDFORD: My objection to this  
8 document, as apportioned, will be that it's an  
9 incomplete exhibit.

10 I raised this issue in my opposition to  
11 their motion to reopen, that this particular  
12 exhibit lacked the exhibits. And so this is not a  
13 surprise, it was in my original motion.

14 HEARING OFFICER VALKOSKY: Mr. Welch, is  
15 the purpose of your testimony to establish that  
16 you, to sponsor in the provisions of the lease  
17 agreement, or to establish applicant has obtained  
18 an option to lease the proposed site?

19 MR. WELCH: To establish that the  
20 applicant has an option to lease the site.

21 HEARING OFFICER VALKOSKY: Thank you.  
22 Mr. Thompson, any redirect?

23 REDIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q Mr. Welch, in your opinion is that

1 option currently valid?

2 A Yes, it is.

3 Q Has this been approved by any agency or  
4 reviewed by any agency other than this one?

5 A It has been authorized and entered into  
6 by the Southern California Logistics Airport  
7 Authority.

8 MR. THOMPSON: Thank you, that's all I  
9 have.

10 HEARING OFFICER VALKOSKY: Any redirect?  
11 Mr. Ledford? Thank you, Mr. Welch.

12 Staff?

13 MS. HOLMES: Mr. Buell needs to be  
14 called again.

15 DIRECT EXAMINATION

16 BY MS. HOLMES:

17 Q Mr. Buell, did you prepare that section  
18 of exhibit 146A that relates to site control?

19 A Yes, I did.

20 Q And I'll just skip the pro forma  
21 questions and ask you to please summarize what  
22 your conclusions were.

23 A We believe that the information provided  
24 on January 14th by the applicant provides evidence  
25 that they have site control.

1 Q Does that conclude your summary?

2 A Yes.

3 MS. HOLMES: Thank you. Mr. Buell is  
4 available for cross-examination.

5 HEARING OFFICER VALKOSKY: Mr. Thompson.

6 MR. THOMPSON: No questions, thank you.

7 HEARING OFFICER VALKOSKY: Mr. Adams.

8 MR. ADAMS: No questions.

9 HEARING OFFICER VALKOSKY: Mr. Ledford.

10 CROSS-EXAMINATION

11 BY MR. LEDFORD:

12 Q Mr. Buell, I note this lease is for 50  
13 years.

14 A Yes.

15 Q Is a lease under California law by a  
16 public agency required to have CEQA review?

17 MS. HOLMES: I'm going to object to that  
18 question on the grounds it calls for a legal  
19 conclusion from the witness.

20 HEARING OFFICER VALKOSKY: Sustained.  
21 Anything else, Mr. Ledford?

22 MR. LEDFORD: Well, you stumped me for  
23 half a second. If you give me half a second, I  
24 will.

25 (Laughter.)

1 BY MR. LEDFORD:

2 Q In evaluating the project that is  
3 currently being proposed by the Energy Commission,  
4 it's for a period of only 30 years, is that  
5 correct?

6 A Yes.

7 Q And would this lease, the extension of  
8 time on this particular lease, provide for growth-  
9 inducing impacts on this project?

10 A Not that I'm aware of.

11 Q Have you reviewed the lease, itself, Mr.  
12 Buell?

13 A Yes, I have.

14 Q And is there any provision that talks  
15 about water in any portion of the lease?

16 A Not to my recollection.

17 Q And do you have a copy of the lease that  
18 could be attached to this exhibit in the permanent  
19 record of this proceeding?

20 A I'm not sure I understand your question.  
21 I have a copy of the lease agreement that the  
22 applicant attached to their January 14th filing.

23 Q My question simply is in order to make  
24 the record clear and to eliminate my objection to  
25 this option agreement, could your copy of the

1 lease be attached to the permanent record, and  
2 could the public have an available copy?

3 A My copy of the lease is the copy that  
4 the applicant provided. It is also missing the  
5 attachments which you identified.

6 Q So the answer is you have not reviewed  
7 the lease, the 50-year lease?

8 A I've reviewed the documents, the  
9 agreement that the applicant has provided on  
10 January 14th.

11 Q You missed my question. My question  
12 simply is have you reviewed the lease, exhibit A,  
13 the lease for 50 years?

14 A If that's attached in A, no, I have not.

15 Q And if, for any reason, there was  
16 discussion in the lease relative to water, or High  
17 Desert Power Project providing water service to  
18 the Victor Valley Economic Development Authority  
19 during that 50-year period, might that have issues  
20 of growth-inducing impacts that you've not  
21 studied?

22 MS. HOLMES: Again, I'm going to object  
23 to that because Mr. Buell's testimony does not go  
24 to the growth-inducing impacts of the lease, it  
25 goes to the growth-inducing impacts of the

1 project. And those are two separate issues.

2 HEARING OFFICER VALKOSKY: I'm going to  
3 overrule that. I think it's relevant. Mr. Buell,  
4 please answer it.

5 MR. BUELL: The question, as I  
6 understand it, is if there were terms in the lease  
7 agreement that dealt with water that whether or  
8 not we should evaluate that. And I believe that  
9 my answer is yes, if I understand your question  
10 correctly.

11 BY MR. LEDFORD:

12 Q Previous testimony in this proceeding  
13 has been that the regimen of water was that it was  
14 going to go first from the Mojave Water Agency to  
15 the plant. And then from the plant to the Victor  
16 Valley Water District.

17 But if you may recall when we built the  
18 graph, we actually showed -- you may recall that  
19 Victorville is one of the two applicants to get  
20 the 4000 acrefeet of water on an annual basis. Do  
21 you recall that?

22 A I recall that there's a very complicated  
23 scheme by which water is being provided for this  
24 project, yes.

25 Q And in the application, the City of

1 Victorville puts in the application that they  
2 intend to use the water for municipal purposes,  
3 and so since the City of Victorville is one of  
4 those applicants, the regimen of water may be  
5 addressed in the lease. And that's my concern.

6 A I'm not sure I understand what your  
7 question is.

8 Q Okay. I'm sure that I -- I think I've  
9 actually made the point that I needed to make  
10 here, so, thank you.

11 A Okay.

12 HEARING OFFICER VALKOSKY: Any redirect?

13 MS. HOLMES: I have one question.

14 REDIRECT EXAMINATION

15 BY MS. HOLMES:

16 Q Mr. Buell, is it your understanding that  
17 the project's use of water would be controlled by  
18 the terms of the lease or by the Energy  
19 Commission's conditions of certification?

20 A It would be controlled by the Energy  
21 Commission's conditions of certification.

22 MS. HOLMES: Thank you. I don't have  
23 any additional redirect.

24 HEARING OFFICER VALKOSKY: Recross?

25 MR. THOMPSON: Nothing from applicant.



1                   HEARING OFFICER VALKOSKY: Mr. Ledford,  
2       recross? Thank you, Mr. Buell.

3                   Are there any comments from any members  
4       of the public on the area of site control at this  
5       time?

6                   Sir, if you'd identify yourself and  
7       spell your last name, please.

8                   MR. ROBERTS: Mr. Chairman, Members of  
9       the Board, Commission, my name is John Roberts,  
10      R-o-b-e-r-t-s. I am the City Manager of the City  
11      of Victorville, and the Executive Director of the  
12      Southern California Logistics Airport Authority.

13                  The option to lease the land on which  
14      the power project is designated was approved by  
15      unanimous vote by the City Council of the City of  
16      Victorville which sits as the Board of Directors  
17      of the Southern California Logistics Airport  
18      Authority.

19                  That document has been executed and that  
20      document provides control over the site to the  
21      High Desert Power Partners. There are no  
22      provisions within either the option document nor  
23      the lease document which pertain to the provision  
24      of water.

25                  HEARING OFFICER VALKOSKY: Thank you,

1       sir.

2               PRESIDING MEMBER LAURIE:  Mr. Roberts,  
3       just a note on behalf of the Energy Commission.  
4       We really do very much appreciate the cooperation  
5       of the City in providing these accommodations.  
6       Your folks have been very helpful, thank you.

7               MR. ROBERTS:  Very glad to have you  
8       here.

9               HEARING OFFICER VALKOSKY:  Any other  
10       comments from any members of the public on the  
11       topic area of site control?  Seeing none, we'll  
12       close the record on that.

13              The next topic is the additional  
14       economic information concerning the use of dry  
15       cooling.  Mr. Thompson.

16              MR. THOMPSON:  Thank you.  Applicant  
17       would like to recall Mr. Welch.

18              DIRECT EXAMINATION

19       BY MR. THOMPSON:

20              Q     Mr. Welch, in your prepared testimony,  
21       which is a part of exhibit 143, you have some  
22       material in there, a question and answer on dry  
23       cooling, as an alternative.  Do you adopt that  
24       testimony as your own?

25              A     Yes, I do.

1           Q     Do you have any corrections, additions  
2     or deletions to make to that material?

3           A     No. Basically the purpose of that was a  
4     qualitative analysis of things that I believe had  
5     not been considered in other submittals on dry  
6     cooling.

7           Q     Your testimony here today is to give an  
8     example or an illustration of the costs of dry  
9     cooling, you are not here as an engineering expert  
10    on feasibility, is that correct?

11          A     That is correct.

12               MR. THOMPSON: Thank you very much. Mr.  
13    Welch is tendered for cross-examination on the  
14    issue of dry cooling.

15               HEARING OFFICER VALKOSKY: Ms. Holmes?

16               MS. HOLMES: No questions.

17               HEARING OFFICER VALKOSKY: Mr. Adams.

18               MR. ADAMS: No questions.

19               HEARING OFFICER VALKOSKY: Mr. Ledford.

20                       CROSS-EXAMINATION

21    BY MR. LEDFORD:

22           Q     Mr. Welch, what is your background  
23    related to dry cooling?

24           A     As I've stated earlier, I've been  
25    involved in the independent power business for

1 over a decade.

2 Q Have you ever operated a plant that has  
3 dry cooling?

4 A No, I have not. I have evaluated the  
5 use of it in several plants and have found it not  
6 to be an effective way of cooling a power plant.

7 MR. LEDFORD: Motion to strike the last.  
8 That wasn't my question and I'd appreciate it if  
9 you'd just answer the questions I do offer.

10 BY MR. LEDFORD:

11 Q Do you have any direct educational  
12 background in dry cooling as part of your  
13 mechanical engineering degree?

14 A I have a mechanical engineering degree  
15 which does teach me how to do heat balances, but  
16 I'd say further specifically what I do is that I  
17 have used experts that have educated me on this  
18 issue, in particular on this project. And  
19 further, that I also have more importantly on  
20 that, the experience of the economics of a power  
21 plant and the type of things that go into the  
22 decision of whether to build or not to build a  
23 plant.

24 Q Are you familiar with a project called  
25 Eldorado Power?

1           A     Yes, I have.

2           Q     Have you -- what can you tell me about  
3     that project?

4           A     I understand that it's being built in  
5     southern Nevada; that it has dry cooling. And I  
6     guess, as of yesterday I heard that the  
7     contractors paying liquidated damages because they  
8     failed to meet their performance test  
9     requirements.

10          Q     All right. On the plant, itself, what  
11     size is the plant?

12          A     I believe it may be 500 megawatts. I'm  
13     not exactly sure. It's either 500 or some  
14     variation, something around the size of our plant.

15          Q     And is that power plant located in a  
16     high desert environment very similar to the Victor  
17     Valley?

18          A     I mean southern Nevada, I believe, is a  
19     desert environment, but I'm not that familiar with  
20     what the altitude is at that location.

21          Q     Is the location on Boulder City, Nevada?

22          A     That's -- yes. Or outside of it,  
23     actually.

24          Q     Is Boulder City very close to Las Vegas?

25          A     Yes.

1           Q     Are you familiar with what the elevation  
2     in Boulder City is?

3           A     No, I'm not.

4           Q     If I told you that it was 2800 feet  
5     would you have any reason to disbelieve that?

6           A     No.

7           Q     Is the Eldorado Power Project going to  
8     be selling power into the same energy grid as the  
9     High Desert Power Project sells power?

10          A     I believe that they probably will be  
11     importing power into California; they are not  
12     within the same control area. They are located  
13     outside the state of California.

14          Q     They're selling power into the same  
15     power grid, though, is that correct?

16          A     Well, depending -- define power grid.

17          Q     The power lines that come from Hoover  
18     Dam and come through here and go to Los Angeles --

19          A     If you're talking the Western System  
20     Coordinating Council as a single power grid, yes,  
21     they are.

22          Q     Do you know what the summertime  
23     temperatures are in Boulder City?

24          A     No, I don't.

25          Q     Would you expect that they would be

1 similar to what they are in the Victor Valley or  
2 higher?

3 A I would expect that they probably are  
4 very similar.

5 Q If the Eldorado project found that it  
6 was economically feasible to build their plant,  
7 would it not make sense that the High Desert Power  
8 Plant could also build a plant with dry cooling?

9 A I do not know the economic assumptions  
10 that went into the decision of the two companies  
11 that built that plant in order to do it.

12 I do know that they did have the ability  
13 to go from plant proposal to construction a lot  
14 quicker than a plant in California has the  
15 opportunity to do.

16 That there are many different economic  
17 assumptions that go into it. They do have to deal  
18 with -- also, they are, will likely be serving the  
19 southern Nevada region for power growth which is,  
20 I believe, now the fastest growing area in the  
21 nation. So those economic assumptions are  
22 different.

23 They would be able to serve that load  
24 under different circumstances than we are entitled  
25 to due to the fact that there is no independent

1 system operator in Nevada, as there is in  
2 California.

3 So there are many factors that  
4 differentiate between the plants.

5 Q On how many days in the Victor Valley is  
6 the temperature in excess of 108 degrees?

7 A I don't know that precisely.

8 Q Well, how much money do you expect to  
9 sell the power for on hot days?

10 A On hot days the cost of power is the  
11 highest because the demand for power is the  
12 highest. And so, as you know, being a consumer  
13 you pay more for power on those days.

14 Q But you can't tell me how many days the  
15 power project would be selling power when it's  
16 over 108 degrees?

17 A I would expect all of them.

18 Q No. You can't tell me how many days  
19 that there --

20 A No, I cannot predict the weather, sorry.

21 Q And you haven't studied on an average  
22 basis in your economic analysis how many average  
23 days there are a year?

24 A We have various economic analyses that  
25 we have made clear as far as the assumption of



1        what the weather and what the price of power is  
2        going to be.  It's considered proprietary  
3        information.

4            Q     Isn't the bottom line that it's not that  
5        it's economically infeasible, but that your  
6        company would just make less profit?

7            A     As I've stated on many occasions the  
8        point of building this project is to make a  
9        profit.  There is a level at which a project where  
10      the risk is not paid off by the profit available,  
11      and which you would choose not to do it.

12            And it has been my testimony that  
13      according to our calculations that using a dry  
14      cooling would bring it to the point where it would  
15      not offer enough of a payback to make this  
16      investment worth the risk.

17            Q     One other question.  Are you familiar  
18      with a term called misting?

19            A     In what use?

20            Q     In dry cooling.

21            A     Basically that would be what's also  
22      known as the hybrid cooling system.

23            Q     Can you explain to us what misting  
24      means?

25            A     Misting is that you use an evaporative

1       cooling on top of a dry cooling to help its  
2       efficiency.

3           Q     Especially on hot days?

4           A     Especially on hot days.

5                   MR. LEDFORD:  Thank you.  No further  
6       questions.

7                               EXAMINATION

8       BY HEARING OFFICER VALKOSKY:

9           Q     Mr. Welch, could you just briefly tell  
10       me what are the chief economic ramifications of  
11       using dry cooling on the project?

12          A     The chief is actually reduction in  
13       output.  We're looking at, you know, we get these  
14       peak days we mentioned that we could see a 10  
15       percent drop of the, you know, on the order of 70  
16       megawatts of loss.  And that would be at the time  
17       when the State of California is in most need of  
18       that capacity.

19          Q     And in your economic analysis, and I  
20       take it that that approximate 70 percent (sic)  
21       drop in output basically represents the borderline  
22       between economic feasibility and infeasibility?  
23       Is that another way to look at it?

24          A     That is one of the factors.  There's  
25       many, the initial capital cost and the ongoing

1 operation aspects of the dry cooling. But that is  
2 a major factor.

3 Q Thank you.

4 HEARING OFFICER VALKOSKY: Mr. O'Brien.

5 BY MR. O'BRIEN:

6 Q Mr. Welch, I have a question for you.  
7 In terms of your testimony you talk about a 10  
8 percent penalty at 112 degrees, and a 5 percent  
9 penalty at 98 degrees, therefore the penalty  
10 increases with temperature.

11 Below 98 degrees does the penalty  
12 decrease? And at some point does it go to zero?

13 A At very cool temperatures it approaches  
14 zero. It does decrease. It's asymptotic on its  
15 reduction, approaching zero, doesn't quite reach  
16 it. And I guess also to emphasize that the 5  
17 percent calculation was done in 98 degrees,  
18 assuming a very high relative humidity that is  
19 considered the design case for a cooling tower.  
20 This area does not often see high relative  
21 humidity. So most of the time the 98 degrees  
22 would see more than a 5 percent difference.

23 MR. O'BRIEN: Okay, thank you.

24 HEARING OFFICER VALKOSKY: Any redirect,  
25 Mr. Thompson?

1                   MR. THOMPSON: Just one question, thank  
2     you.

3                   REDIRECT EXAMINATION

4     BY MR. THOMPSON:

5                 Q     The testimony today, including your  
6     direct, was based upon giving an economic  
7     assumption for the record with regard to dry  
8     cooling, but we've touched on a number of other  
9     issues.

10                Would you very briefly tell the  
11     Committee and the public if there are noneconomic  
12     issues associated with the use of dry cooling,  
13     such as the size of the facility or noise or  
14     anything else?

15                A     Yeah, actually, I mean, it's -- I don't  
16     know how many people have seen it, I guess Mr.  
17     Ledford actually has brought in a visual of the  
18     dry cooling for the Eldorado facility. And as you  
19     can clearly see, the facility is -- the cooling  
20     part of the power plant is larger than the rest of  
21     the power plant combined on that plant.

22                It is a large, it is 80 to 100 feet in  
23     the air, probably the size, estimated to be the  
24     size of a football field would be for our -- it  
25     would take up a lot of room. It would impact

1 visually significantly the area.

2 And as I once said, I saw an application  
3 of this in a very different environment, New  
4 Jersey, and it was the only thing I could see that  
5 could make a refinery not stand out, because there  
6 was dry cooling in the refinery which was even  
7 more imposing visually.

8 MR. THOMPSON: Thank you very much.

9 That's all I have.

10 HEARING OFFICER VALKOSKY: Ms. Holmes,  
11 recross?

12 MS. HOLMES: No.

13 HEARING OFFICER VALKOSKY: Mr. Ledford.

14 RECROSS-EXAMINATION

15 BY MR. LEDFORD:

16 Q Just a clarification. Chairman Valkosky  
17 said that 70 percent reduction. Ten percent  
18 reduction is what your testimony is?

19 A Yes, 10 percent, which would be 70  
20 megawatts. He misspoke.

21 Q Which would amount to 70 megawatts of  
22 reduced amount of power that you could put into  
23 the grid?

24 A Correct.

25 Q And that means that that would be 70

1 megawatts that you would not be able to earn a  
2 profit on?

3 A And 70 megawatts somebody else would  
4 have to generate.

5 MR. LEDFORD: No further questions.

6 HEARING OFFICER VALKOSKY: Thank you,  
7 anything else for Mr. Welch? Thank you, Mr.  
8 Welch.

9 Ms. Holmes.

10 MS. HOLMES: Mr. Buell.

11 DIRECT EXAMINATION

12 BY MS. HOLMES:

13 Q Mr. Buell, did you prepare the dry  
14 cooling portion of what's been identified as  
15 exhibit 146A?

16 A Yes, I did.

17 Q Do you have any corrections to make at  
18 this time?

19 A No, I do not.

20 Q Would you please summarize your  
21 testimony?

22 A Although dry cooling would make the High  
23 Desert Power Project less economic, staff does not  
24 believe the applicant has demonstrated the project  
25 would be economically infeasible using dry

1       cooling.

2               However, staff has conducted its water  
3       analysis on the project, as well as other  
4       projects, to determine whether the use of fresh  
5       inland water would result in any significant  
6       environmental impacts.

7               Barring identification of any  
8       significant environmental impacts, staff has  
9       concluded that the decision on which cooling  
10      technology to use should be determined by the  
11      project developers.

12              Staff believes it important to note that  
13      the risk of using dry or wet cooling is that of  
14      the applicants in a competitive market.

15              Q     And does your conclusion that staff is  
16      not recommending dry cooling as a result of the  
17      fact that staff has not found any significant  
18      water impacts rest on Commission adoption of the  
19      conditions that staff has presented in its  
20      testimony that will be discussed later today?

21              A     Yes, it does.

22              MS. HOLMES:   Thank you.   Mr. Buell is  
23      available for cross-examination.

24              HEARING OFFICER VALKOSKY:   Mr. Thompson.

25              MR. THOMPSON:   No questions.

1 HEARING OFFICER VALKOSKY: Mr. Adams.

2 MR. ADAMS: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Ledford.

4 CROSS-EXAMINATION

5 BY MR. LEDFORD:

6 Q Mr. Buell, are you familiar with the  
7 Eldorado Power Project?

8 A I'm familiar with the information that  
9 you provided me, yes.

10 Q And do you have any reason to believe  
11 that that project is economically infeasible?

12 A No, I do not.

13 Q And is that project, to the best of your  
14 knowledge and belief, located in an area that is  
15 similar in altitude and temperature climate to the  
16 Victor Valley?

17 A Based on the information that you  
18 provided me, yes.

19 Q In your testimony relative to impacts on  
20 water, four lines down, four columns across, you  
21 say that there's a significant probability of the  
22 project failing due to the unavailability of SWP  
23 water.

24 While you have said that it's up to the  
25 applicant to take the risk, is it your opinion



1       that this project has a significant possibility of  
2       failing?

3               PRESIDING MEMBER LAURIE:   One moment,  
4       Mr. Buell.

5               (Pause.)

6               HEARING OFFICER VALKOSKY:   Mr. Ledford,  
7       I'll note that while staff didn't object, I  
8       believe that's part of Mr. Buell's testimony for  
9       growth-inducing impacts, is that not correct?

10              MR. LEDFORD:   Correct, but he also  
11       testified that the reason that staff was not  
12       objecting to -- or promoting dry cooling, I don't  
13       remember the exact testimony, but the reason was  
14       because it was up to them to take the risk.

15              So I think that raises the level of the  
16       question to ask him what level of risk that he  
17       thinks that the project has.

18              Now, whether or not I go to this other  
19       document that's one page, two pages behind this or  
20       not, --

21              HEARING OFFICER VALKOSKY:   Right, right.

22              MR. LEDFORD:   -- I don't know if I can  
23       get to that, or not.

24              HEARING OFFICER VALKOSKY:   But I'm just  
25       trying to keep the record as orderly as possible.

1 Ms. Holmes, you had something to say?

2 MS. HOLMES: My only point was going to  
3 be, and I was planning to object but I wasn't as  
4 quick as you were, is that I don't believe that  
5 the question of the risk is relevant to staff's  
6 testimony on dry cooling.

7 HEARING OFFICER VALKOSKY: Okay, let me  
8 just try to cut through some of this.

9 Mr. Buell, is it your testimony that any  
10 risk associated with that, the choice of cooling  
11 technologies, any economic risk, is essentially  
12 applicant's in this case?

13 MR. BUELL: Yes, that's my testimony,  
14 provided that the environmental consequences of  
15 whatever choice you use have been adequately  
16 mitigated.

17 HEARING OFFICER VALKOSKY: Correct. And  
18 is it your further testimony that with the  
19 implementation of all of the conditions of  
20 certification proposed by staff, that the  
21 environmental consequences of the wet cooling  
22 technology will be mitigated below a level of  
23 significance?

24 MR. BUELL: Yes.

25 HEARING OFFICER VALKOSKY: Okay.

1 Mr. Ledford, I think, you know, to the extent you  
2 want to get into growth-inducing impacts, that's  
3 the next topic. Right now, again, we're limited  
4 to the supplemental economic considerations about  
5 dry cooling.

6 And I think, I know Mr. Buell has --

7 MR. LEDFORD: I think that Mr. Buell --

8 HEARING OFFICER VALKOSKY: -- said all  
9 he's going to say. You're free to ask a question,  
10 but, you know, --

11 BY MR. LEDFORD:

12 Q The question is, do you think that this  
13 project has a significant risk of failure using  
14 wet cooling?

15 MS. HOLMES: And, again, I'm going to  
16 object. I don't have a problem with that question  
17 being asked during the discussion about water and  
18 growth-inducing impacts. But I don't think it's  
19 relevant to dry cooling.

20 MR. LEDFORD: Risk of failing has a lot  
21 to do with economics. We're talking about  
22 economics. And he's already stated that the  
23 reason that the staff isn't recommending dry  
24 cooling is because that the risk is to be borne by  
25 the applicant.

1           I believe if Mr. Buell has an opinion as  
2       to whether there's significant risk, he can answer  
3       that question.

4           MS. HOLMES: Mr. Buell did not testify  
5       about the economics of dry cooling. His testimony  
6       specifically says staff has not conducted an  
7       analysis of whether or not dry cooling is  
8       economically feasible. We simply chose not to  
9       recommend it as a result of the fact that we  
10      hadn't identified any adverse water impacts.

11          MR. LEDFORD: I simply asked the  
12      question as to whether or not he has an opinion as  
13      to whether or not, if the project uses wet  
14      cooling, that it has a significant risk of  
15      failure.

16          HEARING OFFICER VALKOSKY: I think the  
17      easiest way is just, Mr. Buell, just answer the  
18      question. We'll move on. Yes or no.

19          MR. BUELL: I would like to say that I  
20      think that the water situation in this basin is  
21      very complex. There's a number of players that  
22      are going to lead to decisions in the future. And  
23      it is possible that the project may, at some point  
24      in the future, lose a water supply from the state  
25      water project. That could lead to failure of the

1 project economically.

2 The applicant could also, at that time,  
3 decide to retrofit the facility with dry cooling.  
4 And continue operation.

5 MR. LEDFORD: Thank you, Mr. Buell.

6 HEARING OFFICER VALKOSKY: Ms. Holmes.

7 MS. HOLMES: No additional questions.

8 HEARING OFFICER VALKOSKY: Any other  
9 questions for Mr. Buell at this time?

10 Any public comment on the -- thank you,  
11 Mr. Buell -- on the economic aspects of dry  
12 cooling? Sir.

13 (Off the record.)

14 HEARING OFFICER VALKOSKY: Back on the  
15 record. Public comment on the topic of dry  
16 cooling. Sir, if you could approach and spell  
17 your last name for the record, please.

18 MR. HUYCK: I'm William Huyck; last name  
19 is spelled H-u-y-c-k. I've given a note to the  
20 court reporter for the spelling.

21 I'm from Hesperia, just a citizen. I  
22 participate on committees, but this is not the --  
23 that has nothing to do with this hearing. I just  
24 want to thank you for the privilege of being able  
25 to speak to you.

1           I just want to make a statement that I'm  
2       against the use of water for cooling. And the  
3       testimony and the discussions that went into this,  
4       I made statements at the MWA on it.

5           I think that the fact, and this was  
6       discussed at our council meeting last night,  
7       council was as concerned about the fact that the  
8       MWA possibly is going to have to ramp down again  
9       another 5 percent. And there's some talk that  
10      there could be other ramp-downs because of the  
11      overdraft.

12           I'm also Chairman of Public Works  
13      Advisory Committee, but this is not -- I'm not  
14      talking -- I'm talking as a citizen.

15           I just think that if there's any  
16      potential or possibility of doing the dry cooling  
17      that every effort should be given towards that  
18      end. I think that the economics of the project in  
19      having this dry cooling has been demonstrated in  
20      the last few months that when come time to have an  
21      election and being able to support candidates,  
22      that would, in my opinion, at least, I'm going to  
23      say roll over and say to hell with the two-for-  
24      one, that's just my opinion.

25           But I'm saying that we are in an over-

1 draft, and our public are going to come unglued.

2 I'm being asked to support a rate increase in  
3 Hesperia because of some of the things that's  
4 going on. They're buying water now from one  
5 location, 3700-some acrefeet of water at \$1 a  
6 year. We ought to be out dancing in the streets.  
7 Those days are coming to an end.

8 But what struck me is the fact that that  
9 amount of water we're going to give away for  
10 evaporation, total loss of that water.

11 And I think that every effort out to be  
12 made, and I would appeal to you folks conducting  
13 this hearing, give a lot of thought to it.  
14 Because, you know, they tell me that there are  
15 going to be \$100 million worth of new development  
16 and all like that. And I tell them that being in  
17 southern California desert, southern California  
18 desert, again we import all of our water. It's a  
19 precious commodity. It's not a renewable -- it's  
20 not something you just open -- put a larger pipe  
21 in, oversize, and say well, now our water  
22 situation is taken care of.

23 The water issues in southern California  
24 in general, northern California's going to be  
25 involved in it, is a very serious matter. It's

1       being discussed at CalFed up and down the state  
2       and across the nation.

3               And I just think if we're going to err,  
4       let's err in an area that we have water. That's  
5       the lifeblood of this country, water, is the  
6       lifeblood. And all said and done, the electricity  
7       that we need in these grids, as they talk about,  
8       could be imported from somewhere else. Go  
9       somewhere where water's plentiful, or go out into  
10      the ocean and use water from the ocean, whatever  
11      needs to be done.

12             And I just hope that you'll take this  
13      thought that I'm bringing to you as a constructive  
14      criticism. I'm not being nasty about it. I'm a  
15      little bit, you know, I'm very conscious of the  
16      fact that we have a water shortage.

17             It's not getting better. It's actually  
18      getting worse. And what I'm hearing from people  
19      from MWA, they're going to have to make some  
20      decisions.

21             And when I saw people making discussion  
22      and decisions based on the fact that -- with the  
23      water, the two-for-one, or whatever, go for it.  
24      We've got a director right in my city that got  
25      elected, and I won't go into that. But I'll be



1 talking to him in a public manner later on.

2 Okay? And I really do want to thank you  
3 greatly for allowing me to talk. I have an  
4 appointment, also that I've got to pick up my  
5 wife, so bear with me, and good luck to all of  
6 you.

7 Thank you.

8 HEARING OFFICER VALKOSKY: Thank you for  
9 your comments, Mr. Huyck.

10 (Applause.)

11 MR. LEDFORD: Mr. Chairman, if I could  
12 beg your indulgence, I would like to make public  
13 comments relative to dry cooling. And I realize  
14 that these pictures that I've passed around today  
15 were not docketed or made as exhibits.

16 However, my wife and I traveled to  
17 Boulder City, Colorado (sic) last weekend. And so  
18 our availability for this information was late.  
19 And if I could, I'd like to make a brief  
20 presentation as to what we saw and submit this  
21 picture for the record.

22 HEARING OFFICER VALKOSKY: Certainly,  
23 Mr. Ledford.

24 MR. LEDFORD: If this mike conks out,  
25 because I think this is important to the public,

1 my wife and I traveled to Boulder City, Nevada,  
2 which is about 150 miles from our location here.

3 And we visited the Eldorado Power  
4 Project and were toured through the facility by  
5 Mr. Cameron.

6 The facility is two gas turbine  
7 generators similar to what the High Desert Power  
8 Project is proposing, and one steam turbine  
9 generator. They're Westinghouse generators; they  
10 have serial numbers 01 and 02. So they are just  
11 getting started with this technology.

12 We were impressed with the power plant  
13 and we found in discussing this project with Mr.  
14 Cameron that the citizens of Boulder City were  
15 extremely concerned about a power project, about  
16 what it would look like, about the use of water.

17 The City of Boulder City has groundwater  
18 rights well in excess of 50,000 acrefeet of which  
19 they only use about 5000 acrefeet. They are not  
20 in an over-drafted basin. This particular site is  
21 about ten miles from Hoover Dam.

22 The project proponents took into  
23 consideration what the concerns of the citizens of  
24 the area were when they constructed this facility.

25 They have budgeted 400 hours of time to

1 operate the plant in excess of the 98-degree  
2 factor. And currently it is not a hybrid plant.

3 They have water rights leased to them by  
4 the City of Boulder City of 300 acrefeet of water  
5 per year. They expect that they will use no more  
6 than 150 acrefeet of water. It's a complete  
7 closed loop system.

8 They have told me that they believe that  
9 the dry cooling process is economically feasible  
10 and that's the reason that they've built the  
11 plant. They have an option to double the size of  
12 the plant to 1000 megawatts.

13 They have not installed any hybrid  
14 system, but he did explain to me a system called  
15 misting, which is, as Mr. Welch said, basically  
16 evaporative cooling process. It is a very  
17 inexpensive process and for those 400 hours they  
18 estimate that it would take another 200 acrefeet  
19 to use the hybrid system.

20 I would just like to say that relative  
21 economics, if there is a plant that is within 150  
22 miles of this site, that's at 2800 feet in  
23 elevation, and it is 100 percent dry cooled, that  
24 that should be demonstrative evidence for this  
25 Commission to determine that dry cooling is

1 economically feasible.

2 Thank you.

3 (Applause.)

4 HEARING OFFICER VALKOSKY: Thank you,  
5 Mr. Ledford. I take it you want to docket the  
6 photograph?

7 MR. LEDFORD: Yes, thank you, I would.

8 HEARING OFFICER VALKOSKY: Okay. I'll  
9 make sure that is docketed.

10 Are there any other members of the  
11 public who wish to address the Committee on the  
12 topic area of dry cooling? Sir?

13 MR. BEINSCHROTH: My name is Jack  
14 Beinschroth.

15 In you dry cooling data you stated that  
16 it is not significant environmental impact barring  
17 identification of significant environmental  
18 impact. It's the decision of the project which is  
19 the most economically feasible.

20 There is a direct environmental impact  
21 by the fact they're utilizing 4000 acrefeet of  
22 water. In this respect the Mojave Water Agency is  
23 currently trying to -- in the process of  
24 negotiating storage agreements with agencies in  
25 the northern part of the state, wherein if they

1 will bring water and put it in our area, pay the  
2 transportation costs, and pay a significant per-  
3 acrefoot cost for the privilege of doing so.

4 And to do this they need to be assured  
5 that there is sufficient entitlement available so  
6 that they can conduct these storage agreements.

7 Now, with the entitlement that they've  
8 given to the power plant, or would be given to the  
9 power plant, it means that these storage  
10 agreements may be limited, and that there would be  
11 an environmental impact by the fact that we  
12 wouldn't be able to put additional water in under  
13 a storage agreement because of the amount of  
14 acreage that is tied up in the entitlement that's  
15 given to these people.

16 And the entitlement that is given to  
17 these people there's no replenishment to the area,  
18 no replenishment to the underground.

19 And with these storage agreements that  
20 they're processing there would actually put as  
21 high as 40,000 acrefeet into storage. And at some  
22 time in the future, on a paper transaction, would  
23 take water from the aqueduct, and this water would  
24 remain.

25 So that the chips are the amount of

1 entitlement we have. If we don't have  
2 entitlement, we don't have the chips to deal.

3 And I think that this is a direct impact  
4 environmentally by allowing this amount of water  
5 to be used in an area of such an overdraft.

6 Thank you.

7 HEARING OFFICER VALKOSKY: Thank you,  
8 sir. Any other comments from members of the  
9 public on the area that we're covering here?

10 Okay, I see none. With that, we'll  
11 close the record on the topic of dry cooling.

12 (Pause.)

13 HEARING OFFICER VALKOSKY: All right, we  
14 have one substantive topic on the agenda, and that  
15 deals with a water agreement and the growth-  
16 inducing impacts.

17 The Committee does not intend to hear  
18 testimony from the witnesses on that prior to  
19 lunch. However, if there are any members of the  
20 public who would like to comment on that, and  
21 don't want to come back this afternoon, you can  
22 make your comment now. Are there any? Ma'am.

23 MS. SARTOR: I was hoping to wait until  
24 the end to give you a summary statement, but it  
25 may be difficult for me to get back. My name is

1       Peggy Sartor. I've lived in Victorville all my  
2       life. I always hate to give my bio because people  
3       who are good at math can add it up and think I'm a  
4       lot older than I am.

5               But I would like to, because of the  
6       background I have, let you know where I'm coming  
7       from. I think it's very important to the decision  
8       that you people have been forced into having to  
9       make.

10              I grew up here, from a construction  
11       family, and we became very involved in building  
12       commercial, housing, waterlines, sewerlines and  
13       all of those things. In fact, Mr. Ledford's  
14       wife's father and my father put together the first  
15       water recycling irrigation project on the original  
16       Jess Ranch. So we've been very interested in  
17       water conservation, planning for the future, and  
18       recognizing that growth is good and growth is bad,  
19       depending on how you look at it.

20              And during this need for my being  
21       involved I became a member of the city council. I  
22       served 20 years, five terms. I served 12 years as  
23       a member of the Lahontan regional water quality  
24       control board. I served a term on the Mojave  
25       Water Agency.

1                   And then also I was a member of the SCAG  
2           executive committee representing San Bernardino  
3           County for over a decade. I also put together the  
4           first hazardous waste management project for  
5           southern California as a part of SCAG. Worked as  
6           the first chair of the desert advisory committee  
7           on air quality, back before we had our own  
8           district.

9                   And all of that has given me a  
10          background of concern that's much broader than  
11          just the flushing of my own toilet or watering of  
12          my own lawn, and those things which are very  
13          important to all of us individually. But we must  
14          look at the total picture.

15                  I remember when this community had fewer  
16          than 5000 people total, the whole valley was my  
17          hometown. And now then, as we grow, we have to  
18          plan for the future. And I don't think we're  
19          doing as well as we might.

20                  We look at things and don't realize  
21          that, well, for instance, let's take the  
22          typewriter and the computer. A few years ago I  
23          would never have believed what's going on in the  
24          computer. Today water is managed in a way that is  
25          similar to the growth of using computers versus



1 typewriters. So, I think that we need to look at  
2 the broader issue.

3 Now, then I'd like to just say that all  
4 of the things I've heard today I'm familiar with,  
5 and they've been addressed. And I think you are  
6 eminently patient to have gone through all of this  
7 over and over and over.

8 I first heard about the project when I  
9 was a member of the Mojave Water Agency Board. My  
10 first reaction was emotional: They can't take my  
11 water. And then I became much more concerned  
12 about what they were going to do, how it was going  
13 to work.

14 I realize Mojave Water Agency is  
15 obligated to take a certain amount of water out of  
16 the state water project. We pay for it. If we  
17 let it go on down to the other parts of southern  
18 California, it isn't benefitting us. We need to  
19 take our allotment.

20 We need to sell water. Mojave Water  
21 Agency has only two ways of supporting itself.  
22 One, to sell the water they have to buy out of the  
23 state project. The other is to raise taxes. As a  
24 taxpayer I don't think that's a very popular idea.

25 So we would like to see the power

1 project go forward. I've spent a lot of time  
2 talking to experts. I've spent a lot of time  
3 talking to local people. I followed this project  
4 through the newspapers.

5 I've come to the conclusion, based on my  
6 conversation with many people, we are anxious to  
7 see the project go forward. We understand the  
8 difference between water cooling and air cooling.  
9 We understand the cost of doing business. We  
10 understand that a lot of things that are very  
11 important today are extinct tomorrow.

12 But we have to use what we have  
13 judiciously. And I think, from what I hear, that  
14 the bulk of the people in the community are in  
15 favor of moving on with the power project. I  
16 think they're also becoming increasingly disgusted  
17 or impatient with the delays which are probably  
18 minimal self-serving, different agendas than the  
19 whole community.

20 So I would ask the members of this  
21 Commission to conclude with a decision that will  
22 make it possible for the community to enjoy the  
23 benefits of the kind of jobs that we're all  
24 begging for. We have many vacant houses. We have  
25 lots of low-level entry jobs, and even those are

1       diminishing.

2               But we need the benefits of the type of  
3       jobs that would be engendered through the  
4       construction of the power project and its  
5       operation.  Water and power are the two elements  
6       that we need probably more than anything else,  
7       besides air.  And we must protect them, we must  
8       use them judiciously, but we also have to use  
9       them.

10              I would just like to thank you for your  
11       patience, your indulgence, and to say that if  
12       there is anything you think I haven't covered, or  
13       you would like to ask, I'd be glad to do it.  If  
14       not, I hope you have a good lunch.  I hope you all  
15       stayed over last night.  I used to travel to  
16       Sacramento and we have the same kind of fog  
17       problems you do up there.

18              Thank you.

19              HEARING OFFICER VALKOSKY:  Thank you,  
20       ma'am, for your comments.

21              (Applause.)

22              MR. HUBER:  Thank you, I'm Larry Huber,  
23       H-u-b-e-r.  I'm President of Victor Valley Water  
24       District.  Good morning and welcome to sunny  
25       Victorville, and warm.  It's usually better than

1       this.

2               I'm here with four of our other board  
3       members. And we are really concerned. We are  
4       elected by the people to do the best job for our  
5       water users.

6               It took me and other board members a  
7       long time to think this project was good for our  
8       community. But with the tax money, jobs to the  
9       valley, some small benefits in the agreement to  
10      our water users, we voted to approve the project.

11              No one in our district has opposed this  
12      project at the water board level. 15,000 users,  
13      no one has come to our board and opposed this  
14      project. There must be some confidence in what  
15      we've been doing.

16              I asked Mr. Buell last January 18th if  
17      this would be his last time at the water district  
18      if everything was okay. He said that everything  
19      was okay with the water.

20              What has really changed? It looks like  
21      the project is getting on a political side. Jack  
22      Beinschroth and Bob Almond's testimony, almost  
23      one-third of the questions are political. That  
24      sure seems strange to me, a project this size.

25              According to the paper Mr. Ledford is

1       doing everything possible to kill the project.  
2       All he is really concerned about is his own  
3       interest.

4               Please make the High Desert Power  
5       Project a win/win for all. It is important that  
6       we may have a tool to get some water in our  
7       overdraft basin.

8               The MWA's running water down the Mojave  
9       River is not the answer to our basin. Help us to  
10      solve some of our problems and improve our aquifer  
11      storage agreement and recovery agreement, as  
12      approved by our board members.

13              Thank you.

14              HEARING OFFICER VALKOSKY: Thank you,  
15      sir.

16              MS. SONNERFELD: My name is Hammelone  
17      Sonnerfeld. I don't approve of this project. To  
18      bring some water in my land in other land. The  
19      water is very bad, and I should pay so much money  
20      every year, \$800 for no water, and it's all  
21      contaminated.

22              I'm not approving for this. Thank you.

23              HEARING OFFICER VALKOSKY: Thank you,  
24      Ms. Sonnerfeld.

25              Any other comments, Mr. Roberts?

1                   MR. ROBERTS: Mr. Chairman, Members of  
2                   the Committee, if you'll briefly indulge me again  
3                   to reiterate the importance of this project to the  
4                   entire Victor Valley.

5                   When George Air Force Base was closed by  
6                   the federal government it had a devastating effect  
7                   upon the economy of this valley. The valley came  
8                   together probably in one of the rare unanimous  
9                   coalitions to redevelop former George Air Force  
10                  Base and to bring back those lost jobs.

11                  And the key component to that  
12                  redevelopment effort is the redevelopment tax  
13                  increment that will be generated to invest the  
14                  hundreds of millions of dollars needed to  
15                  rehabilitate that project.

16                  This town project is the single most  
17                  vital component to launching an energizing that  
18                  redevelopment project area. It is widely  
19                  supported by the public. I think you've seen that  
20                  by the lack of widespread opposition to the  
21                  project in your hearings, and in the other  
22                  hearings that have been held by the other  
23                  agencies.

24                  As Mr. Huber pointed out, there has been  
25                  no opposition to any of the hearings that the City

1 of Victorville and the SCLA Board of Directors  
2 have held in approving this project.

3 There is a concern growing in the  
4 community, as it has been expressed to me, about  
5 this permitting process in that it appears that  
6 the permitting is being delayed. And that is at  
7 great cost to the community in this redevelopment  
8 project.

9 And what 90 days ago appeared to be an  
10 opposition and a concern regarding the use of  
11 water and the fact that that would inhibit growth  
12 is now an argument that that very same use and  
13 method is going to induce growth. So there is a  
14 growing lack of confidence among the community  
15 about this very much anticipated project.

16 The power partners, City of Victorville  
17 was concerned about water, and the power partners  
18 over the last 18 months have set out very  
19 vigorously to address this issue. We have forged  
20 a joint agreement with the Victor Valley Water  
21 District that we are both comfortable with, and  
22 the relationship between the water district and  
23 the city has never been stronger.

24 We are very much concerned about the  
25 impact that this may have on the entire balance

1 and the working relationships of the agencies.

2 I'm not an expert on the California  
3 Environmental Quality Act, but on the issue of  
4 growth the City of Victorville and the City of  
5 Victorville Planning Commission addressed that  
6 issue on every project that occurs in this city.

7 This particular project, the power  
8 project, the lead agency is the CEC. But any  
9 projects that would come before the city in future  
10 growth, and the contention is that the water would  
11 be an inducement to growth, would be subject to  
12 review and approval by the planing commission, the  
13 city council and if necessary, environmental  
14 reviews.

15 The growth of the city has already been  
16 environmentally analyzed in our general plan, in  
17 our zoning. And any project that comes forth in  
18 the future will be viewed in terms of those  
19 environmental reviews.

20 We urge the Committee to quickly move  
21 forward with the permitting of this project. And  
22 we remain here to provide you any assistance that  
23 we may.

24 Thank you.

25 HEARING OFFICER VALKOSKY: Thank you.



1 Any other comments on this topic area? Ma'am.

2 MS. PRIVETT: Yes, I'm Esther Privett,  
3 and I'm a retired registered nurse, and I write  
4 now as a freelancer. And I live, I guess it's  
5 downstream from where the project will be. And  
6 it's a lovely community called Silver Lakes. With  
7 wonderful water, delicious water that we don't  
8 have to chlorinate, as I understand Victorville is  
9 now doing. I hope it stays that way.

10 I understand that power plants who  
11 inject water into the riverbed pollute. They may  
12 say they're going to clean it; they're going to  
13 process it and give it back to us as pure water.  
14 But I wouldn't wait 30 years to prove that point,  
15 which is an article that was in the paper today,  
16 that you'll be required to do that in 30 years.

17 I also don't like to see people just  
18 write off farmers and pioneering people who have  
19 helped to develop this valley. And just say,  
20 well, if they don't have enough and they can't pay  
21 for it, let them go do something else. I think  
22 that's not a kindness when you're looking at  
23 residents. We're not all realtors who live in  
24 this area.

25 I'm just saying there was a time when

1       they were talking about bringing small business,  
2       inviting small business here.  If this power plant  
3       does it, I'm not certain that it is necessary that  
4       a power plant be here to bring small, clean  
5       business to this area.

6               I don't know.  Do we want another power  
7       plant, when we have one -- Gary Ledford talking  
8       about one that's only 150 miles away who could  
9       provide us with power, why do we need another  
10      power plant.  It's going to take precious water  
11      from the aqueduct and it will suck up water from  
12      the river more than one time a month.

13             I think it will contribute to smog.  
14      And, as my main concern is that it will endanger  
15      our water supply.

16             That's all I have to say.

17             HEARING OFFICER VALKOSKY:  Thank you,  
18      ma'am.

19             (Applause.)

20             HEARING OFFICER VALKOSKY:  Anyone else?  
21      Yes.

22             MS. HOWARD:  Yes.  My name is Barbara  
23      Howard, and I live approximately seven miles north  
24      of the proposed power plant.

25             To me it's ludicrous to bring a plant or

1 an industry into the high desert that depends on  
2 water when our water supply is in question.

3 I have recently read in the paper, I  
4 don't know how much is fact, that the Commission  
5 is leaning towards the power plant being in  
6 control of their own wells. I'm sorry, but I  
7 don't like the idea of the fox guarding the hen  
8 house. Who monitors them when they decide that  
9 the water from the aqueduct might be too expensive  
10 to purchase and we will pump a little bit more out  
11 of the aquifer.

12 That's all I have to say. Thank you.

13 (Applause.)

14 HEARING OFFICER VALKOSKY: Thank you,  
15 ma'am.

16 Any further comments?

17 Okay, if there are no more comments, as  
18 I indicated earlier we will hear the witnesses on  
19 the water agreement/growth-inducing impacts  
20 following lunch.

21 After that, after the presentations of  
22 the witnesses there will be an opportunity for  
23 public comment. There is, however, also that  
24 opportunity now for those that may not wish to  
25 attend this afternoon's session.

1                   If there are none, we'll close the --  
2           sir?

3                   MR. LEDFORD: Could you advise us as to  
4           how this is going to be concluded? Is there going  
5           to be closing arguments? Is there going to be  
6           briefs?

7                   HEARING OFFICER VALKOSKY: Okay, the  
8           Committee will evaluate the need for briefs at the  
9           conclusion of the presentation of the testimony  
10          this afternoon.

11                   We will accord each of the parties a  
12          brief period depending on how much time we've got  
13          left to make closing argument this afternoon.

14                   MR. LEDFORD: Thank you.

15                   HEARING OFFICER VALKOSKY: Okay. With  
16          that we will recess for lunch. We will reconvene  
17          here at 12:45.

18                   (Whereupon, at 11:40 a.m., the hearing  
19                  was adjourned, to reconvene at 12:45  
20                  p.m., this same day.)

21                                   --o0o--

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1 AFTERNOON SESSION

2 12:50 p.m.

3 HEARING OFFICER VALKOSKY: We will  
4 reconvene with the topic of the water agreement  
5 and associated growth-inducing impacts.

6 Mr. Thompson.

7 MR. THOMPSON: Thank you very much. We  
8 would like to recall Mr. Andy Welch in the area  
9 of -- but I would like to make a very brief  
10 statement about the direction of the testimony in  
11 this area.

12 We read the Committee order which  
13 directs the applicant and staff to address any  
14 potential growth-inducing impacts associated with  
15 the term of the water agreement. And went back to  
16 the transcript where Hearing Officer Valkosky says  
17 that, "We also believe, however, that Mr. Ledford  
18 has raised a pertinent related point, which in our  
19 parlance, would result to any growth-inducing  
20 impacts by virtue of the fact that the site lease  
21 is apparently for a longer period of time than is  
22 the expected project life."

23 Reading those we believe that the issue  
24 as outlined by the Committee is the length of the  
25 aquifer storage agreement, and address that in our

1 further direct testimony in two ways, which you  
2 will hear from our witness.

3 The impacts of adopting the staff  
4 proposed conditions of certification in a couple  
5 areas will also be addressed in our testimony, as  
6 we believe that the staff proposal does not  
7 contain the analysis that we thought it would, but  
8 the fix, the two solutions in the fix are neither  
9 acceptable. One is a further delay or onerous  
10 conditions of certification.

11 So, with that as the background, Mr.  
12 Welch, you've been previously sworn?

13 MR. WELCH: Yes, I have.

14 DIRECT EXAMINATION

15 BY MR. THOMPSON:

16 Q Do you have in front of you exhibit 144,  
17 which has been identified as the additional  
18 prepared testimony of Andy Welch?

19 A Yes, I do.

20 Q Do you have any corrections, additions  
21 or deletions to make to that material?

22 A Only in 4A there was a bit of an error  
23 in typing. What 4A, number 2 should have said is,  
24 does not seem that site control and water access  
25 may not be fully utilized in later years could be

1       seen as limiting growth not contributing to area  
2       growth.

3           Q     And would you like that change made to  
4       your testimony?

5           A     Yes.

6           Q     Now, with regard to exhibit 145 which  
7       has been identified as the aquifer storage and  
8       recovery agreement dated January 18, 2000, would  
9       you please summarize the differences between this  
10      version and the previous version of that same  
11      agreement?

12          A     This version and the one that was  
13      submitted earlier in January differ in two areas,  
14      one of which was the reduction of the term of the  
15      agreement from 80 years to 50 years; and the  
16      second is a paragraph was inserted by the water  
17      district to state that approval could be impacted,  
18      or their agreement could be impacted if the Energy  
19      Commission conditions of certification which are  
20      attached were to change in the final decision.

21          Q     With regard to the reduction in the term  
22      from 80 years to 50 years, is 50 years also the  
23      term of the site lease?

24          A     Yes, it is.

25          Q     Do you believe that the reduction of 80

1 years to 50 years makes it clear, or at least  
2 leads to the conclusion that there are no growth-  
3 inducing impacts with that agreement, given the  
4 new length of the agreement?

5 A Yes, it was always the anticipation that  
6 the term of the agreement would be more likely  
7 determined by the termination on the written  
8 notice from High Desert Power to the water  
9 district in order to make it so that it wouldn't  
10 be an agreement with an indefinite term.

11 Originally there was an 80-year number  
12 put in there as a maximum. We lowered it to 50  
13 years in this case. It wasn't dropped all the way  
14 down to 30 years because like the site lease, our  
15 financing experts have informed us that it's  
16 necessary when financing a project like this that  
17 certain key agreements have terms longer than the  
18 expected life of the project, and significantly  
19 longer gives that level of comfort.

20 So that's what was targeted here.

21 Q Thank you. Have you had a chance to  
22 review exhibit 46, which is the staff's testimony  
23 of February 18th, along with the conditions of  
24 certification?

25 A Yes, I have. I believe you mean 146?



1 Q If I said 46, I'm mistaken. 146.

2 A Yes.

3 Q Thank you. And with regard to the soils  
4 and water conditions contained in exhibit 146,  
5 would you please describe those conditions which  
6 are unacceptable to applicant, or your choice,  
7 those which are acceptable?

8 A There were several changes to it, many  
9 of which were simply reordering. And rather than  
10 go into the specifics I think it would be easier  
11 to say that it is the new conditions which is a  
12 new concept on number 7 and number 17.4, which  
13 pose a problem to us.

14 I'd say not the least issue of which is  
15 it is inconsistent with the way that the aquifer  
16 storage and recovery agreement now stands.

17 Q So if those conditions were to be  
18 adopted the aquifer storage and recovery agreement  
19 would have to be amended, if it could be?

20 A That's right, it would have to be  
21 amended again.

22 Q Are there any other difficulties that  
23 you have with those two conditions?

24 A Yeah, they do impact, I mean we  
25 specifically had arranged things in the contract

1 and the ownership -- for example, the ownership of  
2 the wells, that rather than being by the project  
3 would be by the water district. Not the least of  
4 which is the reason for that is because drilling  
5 and maintaining operating wells is what they do,  
6 and not what the power plant does.

7 Makes a lot of things easier on their  
8 point perspective. We have gone through a lengthy  
9 process of, in what is condition number 17, to  
10 limit restrict what other use that they could have  
11 of those wells. It specifically contemplated that  
12 they could not rely on those wells to meet any  
13 load growth or even existing demand in their  
14 territory. That they would have to do that  
15 amongst their own wells. And they could use these  
16 only as a backup and take advantage of it for  
17 both -- not only for emergency, but for economic  
18 advantages, however minor they may be.

19 Q In exhibit 146 under growth-inducing  
20 impacts, this is the staff testimony on page 3,  
21 let me read a phrase and get a reaction from you  
22 if I could.

23 Quote, "VVWD's use of HDPP facilities  
24 are potentially growth-inducing, since this would  
25 provide an increased water supply for VVWD,

1       thereby removing an obstacle to growth."   End  
2       quote.

3               Do you have any comments or observations  
4       on that statement?

5               A     Yeah, I think there are several problems  
6       with it, one of which is that I don't think it's  
7       appropriate to say that the building of a well is  
8       an obstacle to growth.  As it exists now the water  
9       district has, I believe, drilled at least two  
10      wells last year.  Plans to do several more this  
11      year.

12               What's further also is that the mere  
13      drilling of a well under the adjudication is not  
14      the same as having rights to produce out of that  
15      well.

16               There would be no rights transferred to  
17      the wells, or no free production allowance that  
18      are associated with them.  So, it's essentially a  
19      hole in the ground with a pump on top, and not the  
20      ability to pull any water out other than  
21      consistent with the adjudication.  And their  
22      rights to acquire free production allowance or to,  
23      you know, any other way of handling wells exists  
24      today, and they could build their own facilities  
25      to support that.

1                   So I don't think it's appropriate to say  
2           that the ownership of the facilities in this basin  
3           are the same as having water rights, or even  
4           having additional water supplies.

5           Q     Is it your understanding of the aquifer  
6           storage agreement that as it is currently written,  
7           as it currently stands, those water treatment  
8           facilities could be used for water injection  
9           aquifer replenishment, but could not be used for  
10          domestic water supplies. Is that your  
11          understanding?

12          A     That is correct. The only use of any of  
13          the water treatment facilities that is even  
14          contemplated under that agreement would be for  
15          them to use them as part of a water injection.  
16          The facilities are not being designed to be used  
17          for domestic use.

18                   And those are facilities that we intend  
19          to own.

20          Q     Finally, Mr. Welch, if I could direct  
21          you to table 1 of the staff's material.

22          A     Yes.

23          Q     Do you have any observations to make  
24          with regard to the contents on table 1 on page 4?

25          A     Yes, I do. I have several observations

1 to make, one of which is to reiterate my earlier  
2 statement about, you know, they maintain that the  
3 impacts to groundwater would be possible because  
4 they have additional pumping facilities. And, as  
5 I've stated, that they'd need rights to pump water  
6 in order to do that.

7 So that goes back, and we reference the  
8 Presiding Member's Proposed Decision, page 199,  
9 when they're talking about the intervenor's claim  
10 that this would, in fact, be a growth inhibiting  
11 project, that they say that the evidence does not  
12 establish the effect that the sole factor of water  
13 would or would not play in possible development.  
14 It would be clear then the water facilities,  
15 without even the right to pump water, would be  
16 even less likely to lead to possible development.  
17 And makes that estimate even more speculative.

18 I'd also go on to point that we do --  
19 had quite a bit of problem at first reading on the  
20 staff's characterization that there is a  
21 significant probability of the project failing  
22 prematurely. We obviously do not feel that way.

23 We believe that all of our studies have  
24 indicated that while there is a potential, we've  
25 analyzed with, we agree with again the Presiding

1 Member's Decision on, I believe it was page 215,  
2 their conclusion where they thought sufficient SWP  
3 supplies would be available to the project.

4 So, Mr. Buell did state earlier to go  
5 into further detail of what the definition of  
6 significant probability meant. And it may not be  
7 as strong as I had it at first reading.

8 But I do think that that should at best  
9 be considered an uncertain probability.

10 Q Let me try a summary question and see if  
11 you can agree with my premise, and then elaborate.  
12 Are you testifying that the term growth-inducing  
13 impacts requires a nexus or a cause-and-effect  
14 between the activity and the result? I'm hesitant  
15 to use my wife's experience in inducing labor, but  
16 I tend to think of it as something that is more  
17 than just a chance. It is almost a necessary  
18 conclusion given a set of circumstances.

19 And if that is what you believe a  
20 definition or set of circumstances are, if you  
21 agree with that, have you testified to issues that  
22 fail that test?

23 A Yeah, I believe so. Then I would like  
24 to state that I don't share your experience of  
25 inducing labor and that my wife is only now

1       expecting our first child.

2               But I would say that yeah, we believe  
3       that there, in fact, needs to be a cause and  
4       effect to, you know, staff has indicated that  
5       their concern would be to do further studies as to  
6       what the environmental impact of any induced  
7       growth would be.

8               We think that first the test has to be  
9       that there would be an expectation, more than  
10      purely speculative, that there, in fact, would be  
11      growth induced by the project.

12              And on the water side, I think in some  
13      discussions we've have further, and perhaps Mr.  
14      Hill will go into further, these are things that  
15      while giving them flexibility and perhaps even  
16      being beneficial to the environment, don't  
17      actually offer any economic incentives to lower  
18      the rates.

19              Though I think you'll also want to make  
20      clear to anybody in the public that they do have  
21      protection from the ratepayers not having to pay  
22      our costs. But it does not necessarily afford a  
23      lot to see their reduction in costs.

24              MR. THOMPSON: Thank you very much. Mr.  
25      Welch is tendered for cross-examination.

1 HEARING OFFICER VALKOSKY: Ms. Holmes.

2 MS. HOLMES: Thank you, I have just a  
3 couple of questions.

4 CROSS-EXAMINATION

5 BY MS. HOLMES:

6 Q As I understand your proposal, Victor  
7 Valley Water District would own the wells that  
8 would be constructed for the High Desert Project,  
9 is that correct?

10 A Yes, the contract calls for them to  
11 design and construct them, and us to reimburse  
12 them for those costs.

13 Q So you'd be paying for them, and they'd  
14 take title to them, is that correct?

15 A Yes.

16 Q How much money does that entail?

17 A It includes water lines and all, I mean  
18 it's millions of dollars.

19 Q So that's millions of dollars that VVWD  
20 would otherwise have to spend to obtain the same  
21 facilities that in this case you're providing for  
22 them, as a result of the agreement?

23 A Well, a good portion of those  
24 facilities, actually the pipeline to deliver to  
25 our project site, as well as to build those wells



1       for dual purpose injection and withdrawal, that  
2       does increase the price of them.

3               So, that's right. In exchange for that  
4       there is the commitment on their part that they  
5       will not use these wells to be considered towards  
6       their demand, or their capacity.

7               Q     I'm trying to focus on my original  
8       question, which is this is an avoided cost, if you  
9       will, to VVWD?

10              A     Well, for the life of the project it's  
11       not, it's a cost they wouldn't have had to incur  
12       without us. That the only use of those wells,  
13       with the exception of displacement of others,  
14       which they wouldn't otherwise do, is a -- for  
15       example, the use that they're allowed to do under  
16       condition 17 is not something that they would  
17       drill new wells in order to do.

18              It may be a benefit to them, but it is  
19       not something that they would drill new wells for.  
20       So, it's not an avoided cost that -- or it's not a  
21       cost that they're avoiding, it's something that  
22       wouldn't be done.

23              Q     Didn't you just testify that VVWD  
24       drilled two new wells last year?

25              A     Oh, they're capable of drilling wells,

1 but for the purpose of meeting their demand they  
2 would drill wells. But for the limit that they  
3 have on using these wells under condition 17 of  
4 your conditions, which are incorporated in that  
5 agreement, they would not drill wells just in  
6 order to use it to temporarily displace from wells  
7 that are closer to the river.

8 Q But they are getting to use them without  
9 having to pay any capital costs associated with  
10 them?

11 A Yes.

12 Q Earlier you talked about rights to pump.  
13 And I'm trying to recollect my understanding of  
14 how that works in this area. Isn't it true that  
15 you don't need a free production allowance to  
16 produce water from a well?

17 A That -- the two choices in the  
18 adjudication are free production allowance or  
19 replacement water.

20 Q Right, earlier today you said there  
21 weren't any free production allowances associated  
22 with the well, and I thought you were implying  
23 that that would mean that there weren't any water  
24 rights associated with the well.

25 Did I understand you correctly?

1           A     I'm trying to remember what I was  
2     saying.

3           Q     I'll ask it in a slightly different way.  
4     Isn't it true that the fact that there may be no  
5     free production allowance associated with a  
6     specific well doesn't mean that VVWD can't pump  
7     from it?

8           A     If they pump the well and they do not  
9     acquire free production allowance, whether it's,  
10    you know, any well, whether it's one they built or  
11    not, they could also buy replacement water for it.

12          Q     Thank you. You also talked a little bit  
13    about the agreement allowing use of the treatment  
14    facility only to store water into the aquifer, is  
15    that correct?

16          A     Yes.

17          Q     And would that be using the VVWD wells?

18          A     That would be to use the project facilities  
19    which are, by definition of the contract, owned by  
20    VVWD.

21          Q     And can't VVWD turn around and pump from  
22    those wells, as well, under the terms of the  
23    agreement?

24          A     Provided they're displacing pumping from  
25    other wells.

1 MS. HOLMES: Thank you. Those are all  
2 my questions.

3 HEARING OFFICER VALKOSKY: Mr. Adams.

4 CROSS-EXAMINATION

5 BY MR. ADAMS:

6 Q Exhibit A to the agreement is a map  
7 showing locations of the project facilities. And  
8 it hasn't been attached to the last couple of  
9 drafts, but my understanding is that it is  
10 unchanged from the exhibit that was distributed  
11 with the evaluation of alternative water supplies,  
12 is that correct?

13 A That's correct, exhibit A is the  
14 existing and proposed groundwater production wells  
15 and water transmission pipelines in the  
16 Victorville/Adelanto area dated the 6th of  
17 November 1998.

18 Q Okay, and that hasn't been changed since  
19 it was submitted?

20 A Has not been changed since November of  
21 '98.

22 Q November of '98.

23 MR. LEDFORD: Excuse me, is that exhibit  
24 before the Commission today? Because it's not a  
25 part of the exhibits that have been presented --

1 HEARING OFFICER VALKOSKY: I believe  
2 Mr. Adams is referring to an attachment to the  
3 aquifer storage and recovery agreement which we  
4 have identified as exhibit 145, is that correct?

5 MR. ADAMS: Yes, specifically I'm asking  
6 the aquifer storage agreement has a placeholder  
7 exhibit A and references in it to exhibit A, which  
8 is the location of future project water  
9 facilities.

10 And that exhibit A, if I'm understanding  
11 Mr. Welch correctly, is the same as a map that was  
12 submitted in November of '98, hasn't been changed.  
13 That's all I was trying to establish.

14 HEARING OFFICER VALKOSKY: And that is  
15 the case, right?

16 MR. WELCH: Yes, it is.

17 HEARING OFFICER VALKOSKY: It's the same  
18 map?

19 MR. WELCH: It's the same map, yes.

20 MR. LEDFORD: Okay. Mr. Chairman, my  
21 question is it's not before the Commission today  
22 as a part of the exhibit? At least it's not --

23 MR. WELCH: It is part of earlier  
24 exhibits.

25 MR. LEDFORD: Your exhibit number 46, it

1 is not --

2 HEARING OFFICER VALKOSKY: Physically,

3 it is not --

4 MR. LEDFORD: And in the November --

5 HEARING OFFICER VALKOSKY: -- before it.

6 It is --

7 MR. LEDFORD: -- hearings it was not  
8 identified as an exhibit. The closest one we  
9 could come to is, which I think it is probably  
10 emulated off of is the exhibit out of Mr. Beebe's  
11 testimony, which was exhibit number 65, is that  
12 correct?

13 MR. WELCH: I believe it in all  
14 likelihood was the same.

15 MR. LEDFORD: It says figure 1 on it,  
16 so.

17 MR. WELCH: That would be it.

18 MR. LEDFORD: It only had --

19 MR. WELCH: If it matches what I read is  
20 the title block and the date, it's the same.

21 MR. LEDFORD: It only has a different  
22 date on it because Mr. Beebe's testimony is from  
23 March of '99, so. When looking at them side-by-  
24 side they appear to be the same.

25 My problem is there isn't an exhibit in

1 the -- as a part of exhibit number 46, as it sits  
2 here today.

3 HEARING OFFICER VALKOSKY: Right, and as  
4 I understand it, applicant is referring to that  
5 portion of exhibit 65 by reference.

6 MR. LEDFORD: That works for me. I just  
7 wanted to make sure we're --

8 HEARING OFFICER VALKOSKY: Yeah,  
9 that's --

10 MR. WELCH: Yes, that's --

11 MR. LEDFORD: -- reading off the same --

12 HEARING OFFICER VALKOSKY: Yeah,  
13 that's --

14 MR. LEDFORD: -- sheet of music here.

15 HEARING OFFICER VALKOSKY: -- that's  
16 what I understand the case to be.

17 MR. LEDFORD: Thank you.

18 BY MR. ADAMS:

19 Q I'd like to direct your attention to  
20 section 11.2 in the storage agreement. It talks  
21 about the district retaining -- well, to quote  
22 exactly the last sentence of that section says,  
23 any water remaining in storage will become the  
24 property of the district.

25 Is it your understanding that that will

1 transfer title of the 1000 acrefeet that is  
2 required to be left in the bank under soil and  
3 water condition number 7?

4 A No, it's not. I'm getting the feeling  
5 that we've run through this before. It's reading  
6 the same language; I believe you and I have  
7 different interpretations of what it means.

8 What I read this is that there will be a  
9 net positive balance of at least 1000 acrefeet at  
10 the end of the sentence before that. The any  
11 remaining water refers to the water above that  
12 1000 acrefeet.

13 Q Also, just to clarify, your only  
14 objection to staff recommendations on soil and  
15 water conditions at this stage is to condition  
16 number 7 and condition 17-4?

17 A That's correct.

18 Q So the other conditions are acceptable  
19 to High Desert?

20 A Yes.

21 Q And, again, for clarification, two other  
22 questions. It's your position that the reduction  
23 in the term of the water storage agreement from 80  
24 to 50 years has eliminated all growth-inducing  
25 impacts from the project?



1           A     That it eliminates, we believe, the  
2           concerns from. I don't know that there were ever  
3           any growth-inducing impacts in the longer term.  
4           But I would say, yes, it should eliminate the  
5           concerns that there are any growth-inducing  
6           impacts from the project.

7           Q     Okay, and finally again to clarify, is  
8           it your testimony that growth-inducing impacts are  
9           limited to those impacts that are certain to flow  
10          from the project?

11          A     I'm not sure that certain is the right  
12          criteria, but it's somewhere between certain and  
13          highly speculative. That the growth-inducing  
14          impacts that would reasonably be expected to  
15          proceed from the project.

16          Q     Which is a higher standard in your view  
17          than potential growth --

18          A     Yes, --

19          Q     -- potential of growth-induced --

20          A     -- yeah, I would say it's a higher  
21          standard.

22          Q     Okay.

23                  MR. ADAMS: Thank you, I don't have  
24          further questions.

25                  HEARING OFFICER VALKOSKY: Mr. Ledford.

1 CROSS-EXAMINATION

2 BY MR. LEDFORD:

3 Q Mr. Welch, do you recall your testimony  
4 back in October, October 7th, before this  
5 Commission?

6 A I recall testifying before the  
7 Commission.

8 Q I'd like to read from page 179. "As I  
9 stated, the aquifer storage and recovery agreement  
10 is complete." That was in October of last year.

11 And was that statement true at that  
12 time?

13 A I thought it was.

14 Q "And the storage agreement is in  
15 development. The draft's being developed on  
16 that."

17 Are there any draft storage agreements  
18 at this date? That would be the storage agreement  
19 that is within the aquifer storage and recovery  
20 agreement. The one that's referenced with MWA.

21 A There is an internal draft that exists  
22 that is confidential, but that has not been seen  
23 by the agency yet.

24 Q "As far as the conditions of  
25 certification go, all of those agreements are

1       meant to be consistent with that. There is a  
2       specific provision in the conditions that state  
3       that there's two sources of water, being either  
4       the stored and recovered water from the aqueduct,  
5       or direct use of aqueduct are the only two sources  
6       of water available to the project. Typically you  
7       could only call that one source of water, since  
8       it's just all aqueduct imported water being stored  
9       and provided to the project. And there is no  
10      other agreement to provide anything else."

11               That was your testimony then. Is that  
12      still your testimony?

13           A     Yeah, the only thing that we are  
14      contemplating is taking water directly off the  
15      aqueduct or to use water that is stored from the  
16      aqueduct in the aquifer for recovery according to  
17      the agreement with the Victor Valley Water  
18      District.

19           Q     This dialogue transpired between Fish  
20      and Game and yourself primarily, and it was in  
21      reference to the use of the facilities for other  
22      purposes. And both your testimony and that of Mr.  
23      Hill was that it could only be done on your  
24      written consent, that was your testimony. His  
25      testimony, I believe, was that it would only be

1 done in the case of an emergency, which is also  
2 Fish and Game's position, I believe, here today.

3 But, sir, that simply isn't the case of  
4 the contract as it sits here before us today four  
5 months later, is it?

6 A The -- still includes the written  
7 permission and it still includes the means under  
8 which they could use it. I don't know that Mr.  
9 Hill ever testified that it was only emergency  
10 conditions that they could use it, and that is, in  
11 fact, what the major efforts were done on the part  
12 of all the parties to come up with condition  
13 number 17.

14 Q If we could look at exhibit A to the  
15 contract, you have it?

16 A Sure.

17 Q And if you could explain to us the 24-  
18 inch pipeline that comes from the aqueduct to the  
19 plant site, itself.

20 A Explain it? It's a pipe that runs from  
21 the aqueduct to the plant site.

22 Q And what capacity would a 24-inch  
23 pipeline provide?

24 A That was -- the design criteria was to  
25 meet the maximum peak flow into the project which

1 would in all likelihood include water, not only to  
2 the plant for cooling, but also for treatment and  
3 injection into the aquifer.

4 Q So would your testimony be that the  
5 maximum design capacity of this 24-inch line is  
6 8000 acrefeet of water a year?

7 A No. The peak flow, the I think 8000  
8 acrefeet is something -- my memory's going to fail  
9 me -- somewhere around 2500 gallons per minute.  
10 But the peak use of the plant is actually higher  
11 than that. It's the average use that comes out to  
12 4000 acrefeet.

13 Q So the capacity is --

14 A So it's designed for peak flows, not for  
15 average flow.

16 Q So the capacity of the pipeline would be  
17 significantly more than 8000 acrefeet by capacity?

18 A It's again designed for the peak flow.

19 Q My recollection of the testimony before  
20 the Committee was that when the water actually  
21 gets to the project site it gets divided. It  
22 splits into essentially two projects, a water  
23 treatment project that treats water for aquifer  
24 storage, and one that treats water that goes into  
25 the steam turbines, is that correct?

1           A     Actually it goes into the cooling tower  
2     first.

3           Q     Cooling tower.  But there's two  
4     separate, the water actually separates itself.  
5     It's a 24-inch line until it gets to the plant,  
6     but once it gets to the plant it divides into two  
7     separate treatment facilities?

8           A     Yeah, that's accurate.

9           Q     And the RO treatment facility that  
10    treats water that's going to be used for ground  
11    banking is designed to be 4000 acrefeet a year?

12          A     Final design isn't done on that yet, but  
13    that would be the design condition.

14          Q     And under the conditions of approval  
15    before the Commission the project is obligated to  
16    bank within five years, 13,000 acrefeet, is that  
17    correct?

18          A     Yes.

19          Q     And I believe your testimony was that  
20    once that -- you're going to invest several  
21    million dollars in this water treatment facility,  
22    this water treatment project?

23          A     Yes.

24          Q     And so once that the banking is complete  
25    you are going to have a several million dollar

1 investment that is capable of producing 4000  
2 acrefeet of reverse osmosis water that will be  
3 essentially sitting idle?

4 A Yes, except under the provisions of the  
5 agreement where others may use it for injection,  
6 for further injection into the aquifer recharge.

7 Q And would it be your testimony that if  
8 the Victor Valley Water District desired to  
9 purchase water for injection that you would  
10 provide additional water for injection?

11 A They would not purchase the water from  
12 us for injection. That would be agreements with  
13 the MWA.

14 Q They would have to purchase the water  
15 through the MWA, but in order to get it through  
16 the plant you would have to actually process the  
17 water, isn't that true?

18 A Yes. That's right.

19 Q So what we have, sir, is a surplus  
20 capacity on the plant for a period of 25 years for  
21 between 3500 and 4000 acrefeet of water a year?

22 A I mean as it turns out we have to build  
23 it for the peak flow, and that is an unfortunate  
24 investment that we're making that would likely not  
25 be able to be used unless changes were made to the

1 permit.

2 Q Now, if we look at the exhibit again,  
3 and you look at the red line that comes out of the  
4 plant, there is one that goes directly south of  
5 the plant that shows as a proposed 18-inch High  
6 Desert Power transmission pipeline, is that  
7 correct?

8 A Yes.

9 Q Then it doglegs itself to the west for  
10 perhaps a quarter of a mile, and then goes south  
11 again perhaps another half mile? Is that -- I  
12 need to follow this pipeline all the way to the  
13 end.

14 A Yes, correct, it basically routes itself  
15 around the --

16 Q Doglegs --

17 A -- corrections facility.

18 Q And then it doglegs itself back to the  
19 right, back to the east a quarter of a mile, and  
20 then south a half a mile?

21 A Yeah, roughly.

22 Q And then there is a -- on that  
23 particular pipeline there are two wells proposed,  
24 two High Desert Power Project wells proposed?

25 A Yes.



1           Q     And then we go across to the west again  
2     another half mile, and that looks like it's a 12-  
3     inch line. And this plan says 18, but the little  
4     nomenclature on there looks like 12. Can you  
5     clarify that? Is that an 18-inch line?

6           A     I don't know.

7           Q     When we arrive now at that intersection  
8     and we go, we can go south first about a half a  
9     mile, there appears to be three wells on that  
10    pipeline. And that pipeline appears to be a  
11    dashed line. And that shows on here to be the  
12    existing Victor Valley Water District pipeline,  
13    transmission pipeline, to the Southern California  
14    International Airport, is that correct?

15          A     Can you say that again?

16          Q     Well, I'm going to try this a little  
17    differently. If we go back to the High Desert  
18    Power Plant project site, --

19          A     Yes.

20          Q     -- and we go south on that less than a  
21    quarter of a mile, probably, an eighth of a mile,  
22    you'll see an intersection, another red line that  
23    intersects, and that's a dashed line.

24          A     Right, the one that goes up, I was going  
25    to say El Evado, it's now Phantom Road east.

1           Q     And then it goes on a bias and then  
2           comes down onto a section line, and that ties to  
3           five additional wells. That's a dashed line all  
4           the way down.

5                     According to this plan that's an  
6           existing 18-inch pipeline?

7           A     It's my understanding that that is  
8           existing, yes.

9           Q     And so the five new wells that are going  
10          to be drilled over on the existing 18-inch water  
11          supply pipeline to the Air Base, is actually a  
12          municipal line, is that correct? It's a municipal  
13          pipeline currently --

14          A     That existing line is a -- actually it's  
15          a water district pipeline.

16          Q     When you treat the water in the plant  
17          and you put the water -- and this creates a loop,  
18          you're going to put in six miles of pipeline,  
19          there's another six or seven miles of existing  
20          pipeline --

21          A     I don't think the intent is to hook the  
22          wells in, though, the final design will be done by  
23          the water district. I don't think the intent is  
24          to hook those into that existing line, but instead  
25          to have them hooked into this new line, so as to

1       dedicate, to be able to get the injection water  
2       directly from the plant to it, and not mix it with  
3       the existing groundwater supplies that the water  
4       district provides to their customers.

5           Q     That's not what this plan shows, though,  
6       is it?

7           A     This is not a design drawing.

8           Q     Well, it --

9           A     This is a diagram. I assure you before  
10      they dig holes and stick pipes in the ground they  
11      will have design grade drawings done.

12          Q     Well, I have to say that this is the  
13      exhibit that is attached.

14          A     Those wells appear to be adjacent to  
15      that pipeline, but it does not say anywhere that  
16      they are tied into that existing pipeline.

17          Q     Well, sir, the contract says that  
18      they're six and a half miles of pipeline. I can  
19      add up all the miles on the one connected pipeline  
20      and I can add up six and a half miles.

21                I can also add up about six and a half  
22      or seven miles of existing pipeline.

23                So something simply doesn't add up in  
24      the equation of the contract of what you're saying  
25      that you're going to build.

1           A     I don't know, I haven't recently gone  
2           and counted that. You know, maybe we're a mile  
3           off on the amount of pipelines. But the idea is,  
4           as I'm sure you can understand, that there was a  
5           need not to mix the injection water and the  
6           groundwater for domestic purposes. So that he  
7           needs to be able to isolate us from the rest of  
8           his system.

9           Q     Sounds like another condition.

10          A     Sounds like a way that the water  
11          district does business.

12          Q     Sir, if this was a connected loop  
13          pipeline and you were producing RO water into the  
14          system, would there be any reason why that the  
15          Victor Valley Water District couldn't directly use  
16          that water in their municipal system?

17          A     I am not familiar with the health  
18          department regulations enough to answer that  
19          question, but I believe that there are. That we  
20          do not envision that we will meet the letter of  
21          the qualification of, I believe, the drinking  
22          water standards. Though the water may be of  
23          similar or for all appearances, to be exactly the  
24          same. There are technicalities of what you have  
25          to deal with and further liability that the power

1 plant is not willing to deal with to provide  
2 drinking water.

3 And that is why that that is  
4 specifically not mentioned anywhere in this  
5 agreement.

6 Q The fact that it's specifically not  
7 mentioned doesn't mean that it couldn't be done.

8 A There are lots of things that aren't  
9 mentioned that could be done.

10 Q Exactly right. There's lots of things  
11 that aren't mentioned that could be done. The  
12 plant capacity is for 25 years it exceeds the  
13 amount of capacity that you need, the design  
14 capacity of the pipelines exceed the capacity of  
15 the plant and the plant's requirements. These are  
16 all things that could provide water both for  
17 banking and for extraction and for growth, do you  
18 agree with that?

19 A I believe I clearly testified that the  
20 pipe sizes were developed by our engineers under  
21 specific instructions to meet only our need, and  
22 these are the numbers I got back for the pipe  
23 sizes. So I do not believe that they are over-  
24 sized.

25 I would go back before any investment is

1 finally done to check that. But that is -- I  
2 would not agree with you that these pipes are  
3 oversized. If they are, then our engineer made a  
4 mistake.

5 Q You testified about the adjudication and  
6 the use of water out of the wells, and I was a  
7 little confused. Wouldn't it be your  
8 understanding that if you were to drill wells on  
9 your property, and you stipulated to the  
10 adjudication, that you could actually put water  
11 through your plant?

12 MR. THOMPSON: I'm going to object to  
13 the extent it calls for the reading of the  
14 adjudication. We did not qualify Mr. Welch as an  
15 expert on the adjudication.

16 MR. LEDFORD: I find that interesting.  
17 Mr. Welch, I think, opened the door fairly wide.  
18 He talked quite a bit about the adjudication at  
19 your request, Mr. Thompson.

20 HEARING OFFICER VALKOSKY: Mr. Welch,  
21 answer the question to the ability you're able.

22 MR. WELCH: We did not look to put wells  
23 on our site or on the area immediately around it,  
24 on the Airport site, because we were informed by  
25 the United States Air Force Base Conversion Agency

1       that they had contamination on the perched aquifer  
2       and they would not permit anyone to drill through  
3       those, that perched aquifer, at the risk of  
4       spreading that contamination to the lower.

5               So we never considered that -- well,  
6       after talking to them we never considered it as a  
7       possibility.

8       BY MR. LEDFORD:

9               Q     Did you ever consider just tapping into  
10       the perched aquifer and pumping the contaminated  
11       water, processing that for use in your cooling  
12       system?

13              A     We did look at it.  It would be a  
14       concern that that would have the adequate flows  
15       that would be required, as well as there's a lot  
16       of complications, and that was not something that  
17       when we asked the EPA, the Lahontan regional water  
18       quality control board, and the Air Force Base  
19       Conversion Agency that they seemed very interested  
20       in happening.

21               Without cooperation of those agencies  
22       there seemed very little hope of getting a permit  
23       to do that.

24              Q     Assuming that there is a 3500 acrefoot  
25       to 4000 acrefoot surplus capacity in your plant

1 are you prepared to sell that water to the Victor  
2 Valley Water District?

3 A Sell --

4 Q Process it, I'm sorry, they would buy  
5 the water. Process that water for the Victor  
6 Valley Water District?

7 A Provided that we did not need the  
8 injection the contract does say that they can use  
9 our facilities to inject water into the aquifer.

10 Q And --

11 A It does not say that they can use water  
12 to provide domestic purposes.

13 Q Assuming that there was no objection by  
14 any health authorities would you have any problem  
15 with putting water directly into their domestic  
16 system?

17 A At this time I cannot envision anytime  
18 when our company would be willing to take the  
19 liability associated with providing domestic water  
20 to homeowners and businesses.

21 Q Can you explain to me why that there's a  
22 provision in the contract specifically states that  
23 Victor Valley Water District can put wellhead  
24 chlorination on the wells if they want to?

25 A Because consistent with condition of



1 certification number 17, they may use these wells  
2 to displace other well use closer to the river.  
3 And if they, in the event, in the future, are  
4 required to put wellhead chlorination on all of  
5 their wells, they would not be able to use these  
6 for that displacement unless it was also similarly  
7 had wellhead chlorination on them.

8 So they put that provision in in a  
9 forward look of what the regulations may change to  
10 in the future.

11 Q And, sir, doesn't that mean that those  
12 wells would be directly tied into their municipal  
13 water system?

14 A There is no question that the water,  
15 once banked into the aquifer, can be withdrawn and  
16 used as domestic water.

17 But to use it directly out of the plant  
18 is a whole different case.

19 MR. LEDFORD: I have no further  
20 questions.

21 HEARING OFFICER VALKOSKY: Thank you,  
22 Mr. Ledford.

23 EXAMINATION

24 BY HEARING OFFICER VALKOSKY:

25 Q Mr. Welch, are you familiar with the

1 amendments to conditions 6A and B suggested by  
2 Fish and Game in their comments?

3 A Fish and Game suggested changes to the  
4 staff's latest?

5 Q Yeah, that's correct in their --

6 A I believe I have their comments here, if  
7 you would give me a moment.

8 Q Yes, specifically on the bottom of page  
9 2 and the top of page 3.

10 A Yeah, actually -- thank you. That would  
11 be yeah, no, for those most are fine.

12 Q That is acceptable --

13 A That is acceptable, yes.

14 Q Okay. As I understood your testimony,  
15 the inclusion of condition 6-D, as in delta,  
16 proposed by staff and the verification to  
17 condition 6 are acceptable to applicant, is that  
18 correct?

19 A Yeah, we consider 6-D to be unusual, but  
20 is acceptable.

21 Q Will the inclusion of these conditions  
22 require any modification to the aquifer storage  
23 and recovery agreement with VVWD?

24 A Of 6-D and the verification of 6 would,  
25 I believe, not require a modification.

1           Q     Okay. What are your principal  
2     objections to including staff's proposed  
3     conditions 7 and 17.4 into the aquifer storage and  
4     recovery agreement? And specify those for me,  
5     please.

6           A     We believe that there is no tie between  
7     those and environmental impact, taking a  
8     speculative look forward of growth-inducement  
9     which we don't believe is accurate. That as we've  
10    stated, that the existence of these facilities, in  
11    itself, is not adequate to be considered growth-  
12    inducing. And that it puts a limitation on our  
13    ability to do business, or to have the wells  
14    specifically owned and operated by the water  
15    district. Which has always been envisioned as  
16    part of our contract.

17                   We do not see, with them accepting the  
18    limitations in the contract, that there is any  
19    reason to justify that we have to maintain  
20    ownership.

21           Q     Well, let me posit the fact that if you  
22    retained ownership, the Commission clearly has  
23    enforcement authority, is that not correct?

24           A     That is my understanding.

25           Q     Over the use of the facility, right.

1 And the Commission has no direct enforcement  
2 authority over VVWD, do you agree with that?

3 A That I'm not certain of. I know in most  
4 cases, but as these are project facilities, there  
5 has been indication from the staff that that falls  
6 under their jurisdiction also.

7 I think that they can rely further upon,  
8 though, the contract which specifically  
9 incorporates in the Energy Commission's  
10 conditions, incorporated by reference, that make  
11 them part of what it is. And therefore, the  
12 ability of the Energy Commission to force us to  
13 enforce our contract provisions gives the same  
14 protection.

15 Q So in your view it would be the Energy  
16 Commission forcing you to directly require VVWD to  
17 follow a condition of certification, is that  
18 the --

19 A I would hope that for one, there  
20 wouldn't be a violation of that by the water  
21 district, --

22 Q Right, --

23 A -- but if there was that we would act on  
24 our own first. But in the end it would appear  
25 that the Energy Commission would have the ability

1 to force us to enforce our contract rights.

2 Q Do you know if VVWD -- I understand Mr.  
3 Hill is here, but do you know if VVWD agrees with  
4 that interpretation?

5 A I believe they do.

6 Q Okay. Which provision in the aquifer  
7 storage and recovery agreement, or is there a  
8 provision which limits VVWD to using the project  
9 facilities for injection only?

10 A Got too many things out here. The  
11 project facilities, itself, mentioning the wells,  
12 are the -- specifically for injection purposes  
13 only, is 8.3. And that's the only time when it  
14 deals with anything about them being able to use  
15 the treatment plant.

16 And then I believe it is district use of  
17 project facilities, section 15, which most of the  
18 Energy Commission conditions are incorporated  
19 into, specifically by reference.

20 Q I'm sorry, the second one was condition  
21 15, did you say --

22 A Section 15.

23 Q -- section 15?

24 A Yes.

25 HEARING OFFICER VALKOSKY: Okay, thank

1       you. Redirect, Mr. Thompson?

2       BY PRESIDING MEMBER LAURIE:

3           Q     Well, question. Mr. Welch, your  
4       testimony is that these facilities are not being  
5       oversized, is that correct?

6           A     That's correct.

7           Q     Would you have any objection to  
8       including such a condition indicating that the  
9       size of the facilities must be consistent with the  
10      design specifications of the project only?

11          A     I don't think that would be any problem.

12                PRESIDING MEMBER LAURIE: Thank you.

13                HEARING OFFICER VALKOSKY: Redirect, Mr.  
14      Thompson?

15                MR. THOMPSON: Mr. Carroll will ask some  
16      questions on redirect.

17                REDIRECT EXAMINATION

18      BY MR. CARROLL:

19           Q     Just a couple of clarifying questions,  
20      Mr. Welch. You testified that the dollars to be  
21      transferred to VVWD for construction of the  
22      project water facilities would be in the millions  
23      of dollars, is that correct?

24          A     That's correct.

25          Q     I believe it was also your testimony

1       that but for the High Desert Power Project these  
2       are not facilities that VVWD would undertake to  
3       construct? In other words, --

4           A     Yeah, right, they would not construct  
5       facilities with these kinds of limitations on  
6       their use.

7           Q     Thank you. So it's not the case that  
8       this is a gift of millions of dollars to VVWD to  
9       construct facilities for which they would  
10      otherwise have to pay for out of their own  
11      pockets?

12          A     That's correct. This is merely  
13      reimbursing them for the costs that are specific  
14      for us.

15          Q     Okay, thank you. I believe you did  
16      testify that there are a couple of ancillary  
17      benefits that would accrue to VVWD, those being  
18      the ability to use the facilities for groundwater  
19      recharge, and the ability to use the wells to  
20      extract water provided that was in compliance with  
21      the adjudication that they otherwise had a right  
22      to do that.

23                With respect to the first of those  
24      advantages that would accrue to VVWD, that being  
25      the ability to use the facilities for recharge, do

1       you have any sense of what the circumstances would  
2       be under which that would occur?

3           A     Vaguely, in that, you know, there could  
4       be conditions when there is water available to the  
5       MWA, during a wet year, that is particularly low  
6       cost and they see an advantage to doing some  
7       recharge.

8           Plus there has been some questions that  
9       we've come across in our process that the recharge  
10      at the outlets that the MWA uses may not be that  
11      efficient as far as delivering their replacement  
12      water into the regional aquifer. And they could  
13      choose to use the unused, or the idle capacity of  
14      the power plant treatment facility and injection  
15      facilities for recharging the aquifer, and  
16      therefore seeing an environmental benefit.

17          Q     That was going to be my next question,  
18      actually. Based on what you've learned during  
19      these proceedings, would you expect that those  
20      circumstances would result in a positive  
21      environmental benefit?

22          A     I believe that would be very much a  
23      positive benefit.

24          Q     Okay. And then with respect to the  
25      second ancillary benefit that would accrue to



1 VVWD, as I understand your testimony, and correct  
2 me if I'm wrong, it would be limited to physical  
3 mechanism to produce water, which they would have  
4 to obtain either through a free production  
5 allowance or by providing replacement water, so  
6 what we're talking about is simply a physical  
7 mechanism there, is that correct?

8 A Yes, except that they have more  
9 limitation even than that under condition 17,  
10 which says incorporated by reference in the  
11 contract, is that they can only use the facilities  
12 to offset existing well production from other  
13 wells. And then only specifically wells that are  
14 closer to the river. And the concerns of the  
15 environment from the Department of Fish and Game.

16 Q Do you have any information regarding  
17 whether or not water that might be produced from  
18 those wells, what I'll call the project facility  
19 wells, would be materially less expensive from  
20 water that VVWD would produce from any of its  
21 other wells?

22 A That there's a chance that there could  
23 be slight efficiency of the newer equipment, but I  
24 don't think it would be materially better.

25 Q And then just a couple of questions with

1       respect to your concerns regarding soil and water  
2       condition 7. Is it also, is it your understanding  
3       that VVWD would have the power of eminent domain  
4       over properties on which the project facilities  
5       would be located?

6           A     Yes. Yes, I believe they would.

7           Q     And would High Desert Power Project, if  
8       they were the entity that was required to own and  
9       construct those facilities, have that same power?

10          A     No.

11          Q     And would you also have some concerns  
12       that a lender on the project might take pause at  
13       the notion that one of the conditions that would  
14       allow continuing operation of the project would be  
15       that High Desert Power Project continue to own  
16       those facilities, in which case if the lender were  
17       to foreclose, for example, on the project they  
18       would not be in a position to continue operating  
19       because it would be in violation of condition 7?  
20       Would that cause you any concern?

21          A     Yes, we do so, specifically it would  
22       impact the security arrangements of a loan.

23                   MR. CARROLL: Thank you.

24                   HEARING OFFICER VALKOSKY: Are you done,  
25       Mr. Carroll?

1 MR. CARROLL: Yes, I am. Thank you very  
2 much.

3 HEARING OFFICER VALKOSKY: Ms. Holmes.

4 MS. HOLMES: No questions.

5 HEARING OFFICER VALKOSKY: Mr. Adams.

6 MR. ADAMS: No questions.

7 HEARING OFFICER VALKOSKY: Mr. Ledford.

8 RECROSS-EXAMINATION

9 BY MR. LEDFORD:

10 Q In your testimony you testified that you  
11 had no intention of using the water line -- water  
12 from the Victor Valley Wastewater Authority.  
13 Would you be willing to agree to a condition that  
14 said that the High Desert Power Project would  
15 never use any water from the Victor Valley  
16 Wastewater Authority?

17 A I think condition number 1 specifically  
18 handles it. It says that we can get water only  
19 from the aqueduct.

20 Q But your testimony --

21 A I mean --

22 Q -- in the past has been, and actually  
23 the testimony in this particular proceeding, at  
24 the last hearing when we wanted to change the  
25 condition to say shall -- does everybody remember

1       about shall? It got changed to can, went from may  
2       to can, didn't go to shall.

3               And Mr. Thompson explained that there  
4       might be many other ways that you could get water.  
5       The one that we're really concerned about here  
6       today, and have been concerned about for some time  
7       is the 18-inch pipeline that's coming from the  
8       wastewater authority.

9               And, giving you the benefit of the  
10       doubt, you may not know that the City of  
11       Victorville wants to get you water cheap. That's  
12       what we think.

13              A     You are not aware, because it precedes  
14       your time on this project, but the original plan  
15       for providing water to the High Desert Power  
16       Project was to take wastewater from the VVWRA. In  
17       the course of dealing with the Department of Fish  
18       and Game and as they said under oath here the last  
19       time, that they would have serious problems with  
20       that.

21               We went away from that. We abandoned  
22       it. We've said several times on the record we  
23       have no intent of getting wastewater.

24               Your provision about saying never in  
25       there is, I mean it just -- I mean the fallacy of

1       it is that in order for us to get water from  
2       anywhere else we'd have to come in for an  
3       amendment.

4               If there had a condition that said that  
5       we would never do something, we could come in and  
6       amend that condition, also. So I don't see any  
7       benefit.

8               But if you want to insist that they have  
9       a benefit by putting never next to all the  
10      different sources that we are prevented from  
11      getting water from, I don't see any problem with  
12      that. We would not dispute that.

13              Q     Our concern, sir, is about an 18-inch  
14      pipeline that will carry 10,000 acrefeet of water  
15      that's going to run along your east property line.

16              A     I understand that, but your concern is  
17      not with this project or this Commission because  
18      we have nothing to do with that.

19              Q     Considering the fact that it was where  
20      you originally proposed, you have testified to  
21      that today, and it has been testified to on  
22      several other occasions in this project, and there  
23      are many people in the community who have said the  
24      purpose of this new pipeline that is being  
25      proposed to carry 1500 acrefeet of water to a golf

1 course that needs about 600 acrefeet, believe that  
2 the true intent of the pipeline in the political  
3 sense is to provide water for your plant.

4 And that's our concern today. And you  
5 agree to a condition that says that you won't use  
6 Victor Valley wastewater reclaimed water in your  
7 plant. If you can do that it would certainly  
8 eliminate a lot of our concern.

9 MR. THOMPSON: Mr. Ledford, I'm going to  
10 object to this line of questioning. We've been  
11 over this before. This is really the time for  
12 recross. This is a subject that we've gone over  
13 with some tedium. Witnesses have testified that  
14 that project has nothing to do with our project.

15 Our witnesses testified that we believe  
16 we're covered by the condition of certification  
17 that already exists. So I object to further  
18 questions on this subject.

19 HEARING OFFICER VALKOSKY: All right,  
20 Mr. Thompson, I will permit no further questions.  
21 However, I would like to get Mr. Welch's answer to  
22 the last question that was posed.

23 Which, correct me if I'm wrong, Mr.  
24 Ledford, does the applicant object to a condition  
25 that would prevent it from using wastewater from

1 the Reclamation Authority for the power plant, is  
2 that correct?

3 MR. LEDFORD: That's correct.

4 MR. WELCH: And I believe I just stated  
5 that no, we would not object to a condition that  
6 would prevent us from using water --

7 HEARING OFFICER VALKOSKY: Okay, --

8 MR. WELCH: -- the wastewater --

9 HEARING OFFICER VALKOSKY: -- fine,  
10 that's --

11 MR. WELCH: -- facility.

12 HEARING OFFICER VALKOSKY: Great.

13 That's clear. Now we can move off that topic.

14 Okay, anything else, Mr. Ledford?

15 MR. LEDFORD: I believe that will do it,  
16 thank you.

17 HEARING OFFICER VALKOSKY: Okay. Are  
18 there any questions from any of the parties for  
19 Mr. Welch?

20 (Laughter.)

21 HEARING OFFICER VALKOSKY: If there are  
22 none, you can continue --

23 MR. WELCH: Told me I could go.

24 HEARING OFFICER VALKOSKY: -- going.

25 We're going to take a brief recess in a couple of

1 minutes.

2 I'd just like one indication. Mr.  
3 Thompson, are you going to present Mr. Hill at  
4 this time?

5 MR. THOMPSON: Mr. Hill is here and  
6 either staff or us, either of us, if -- yes.

7 (Laughter.)

8 HEARING OFFICER VALKOSKY: The answer is  
9 yes?

10 MR. THOMPSON: Yeah, well, if it's okay  
11 with Mr. Hill I will present him. We were both  
12 shrugging our shoulders.

13 HEARING OFFICER VALKOSKY: I'm sure it  
14 has nothing to do with Mr. Hill's personal  
15 popularity.

16 Okay, with that we'll recess briefly.  
17 Reconvene promptly at 2:00.

18 (Brief recess.)

19 HEARING OFFICER VALKOSKY: Okay, if we  
20 can reconvene, please. Mr. Thompson, if you'll  
21 present Mr. Hill.

22 MR. THOMPSON: Yes, could I have Mr.  
23 Hill sworn, please.

24 HEARING OFFICER VALKOSKY: If you'd  
25 swear the witness, please.



1       Whereupon,

2                               RANDY HILL

3       was called as a witness herein and after first  
4       being duly sworn, was examined and testified as  
5       follows:

6                               DIRECT EXAMINATION

7       BY MR. THOMPSON:

8               Q     Mr. Hill, by way of introduction, my  
9       name is Allan Thompson and I represent the  
10      applicant. For the folks in the audience, I do  
11      not represent any agency located within the Victor  
12      Valley. I guess I don't represent any agency  
13      anywhere.

14                   Mr. Hill, would you please give your  
15      name and place of employ for the record?

16               A     My name is Randy Hill. I'm the General  
17      Manager with the Victor Valley Water District.

18               Q     And you are here to offer comments today  
19      in your capacity as the General Manager?

20               A     That is correct.

21               Q     Would you please give those comments to  
22      the Commission?

23               A     First of all, I'd like to thank you for  
24      introducing me and clear up some of the reason  
25      that no one was quite sure who wanted to call me,

1 as some of my comments today no one wants to hear.

2 Some people at the power project don't  
3 want to hear what I'm going to say, and some  
4 people on staff don't necessarily agree with what  
5 I'm going to say. So that's why there was some  
6 difficulty in deciding who wanted to call me. So  
7 I'm kind of the double-edged sword.

8 Basically the Victor Valley Water  
9 District is opposed to the latest revisions to the  
10 conditions that we've become so familiar with. We  
11 are still trying to recover a little bit from the  
12 surprise of the latest changes that we became  
13 aware of only one week ago.

14 And the reason that we're surprised by  
15 those changes is that the original agreement that  
16 we developed and submitted openly to the public  
17 and before the CEC, as far back as October,  
18 include provisions within it for us to own the  
19 project facilities, and to use the treatment plant  
20 for groundwater recharge.

21 Suddenly, as of one week ago, those  
22 terms are unacceptable. Our agreement has been  
23 subject to a great deal of attention. Has been  
24 the subject within the last 12 months at our board  
25 of directors meetings at least ten times.

1           At those meetings there's been a lot of  
2       discussion made. And the project has been  
3       approved three times. Each time we have modified  
4       the agreement in response to concerns that people  
5       had about the language in the agreement. The very  
6       vast majority of those comments we feel did not  
7       change the intent of the agreement whatsoever.

8           It was approved on September 28th.  
9       There was a hearing in October. We made changes  
10      to the agreement in order to incorporate concerns  
11      addressed at that hearing.

12           After that hearing both Fish and Game  
13      and CEC Staff were to provide us written comments  
14      to that agreement. They never did.

15           We, to the best of our ability,  
16      incorporated what we thought their concerns were  
17      in revising the agreement, which was once again  
18      approved on December 7th.

19           Subject to that there were some  
20      additional concerns raised by CEC Staff that  
21      expressed that there were conditions within that  
22      agreement that weren't in alignment with the CEC  
23      conditions.

24           So another revised agreement was  
25      developed. That agreement, its language entirely

1       was submitted to the CEC for review. They did not  
2       seem to have any problems with that agreement at  
3       that time.

4               At that time I also asked Mr. Buell if  
5       he would come to my board meeting when that  
6       agreement was presented, because I was tired of  
7       having to change the agreement over and over.  
8       And, frankly, wanted to avoid the appearance  
9       before my board of directors that we didn't know  
10      what we were doing.

11             So I wanted him to come and explain why  
12      those changes once again were necessary to the  
13      agreement.

14             Mr. Buell was good enough to come, and  
15      in the comments that he made, of which I'll read  
16      some from our minutes, staff had identified some  
17      areas that were inconsistent and we have provided  
18      our recommendation on where to make the two  
19      documents consistent, to Mr. Hill. And he has  
20      incorporated those changes. With those changes we  
21      now consider the document is consistent with our  
22      proposed decision and we would recommend the board  
23      approve the project, and also that the project be  
24      approved.

25             That was on January 18th. On February

1 11th, by then something had drastically changed.

2 In all of our board meetings in the last  
3 12 months there have been two people who have  
4 spoken out against the project, Mr. Ledford was  
5 one of those people. Neither Mr. Ledford, nor the  
6 other person who opposed the project, are actually  
7 our water customers.

8 At this point I would say that our water  
9 customers are in favor of the project, at least  
10 the way it was in the existing agreement, because  
11 of the benefits that it provides to our customers  
12 and to the community.

13 One of the proposed changes that is in  
14 the CEC Staff analysis regards the ownership of  
15 facilities. There's been concern expressed about  
16 the ability of the CEC to shut the project down in  
17 the event that CEC conditions aren't met.

18 Apparently the feeling is that the CEC  
19 powers are weak. And I disagree with that. The  
20 CEC certainly has the authority to shut down the  
21 plant if the conditions aren't met.

22 The CEC conditions, themselves, have  
23 been made an explicit part of our agreement by  
24 reference and attachment and I'll give just two  
25 examples of that.

1                   Section 8 of the agreement under water  
2           injection says, that it's subject to California  
3           Energy Commission conditions of certification Soil  
4           and Water 4, 6, 7 and 5 attached in exhibit D, and  
5           incorporated herein by reference.

6                   Also under section 15, District use of  
7           project facilities. It says, provided such use is  
8           consistent with the requirements of the California  
9           Energy Commission conditions of certification  
10          Soils and Water 5, 17 and 18, attached in exhibit  
11          D, and incorporated herein by this reference.

12                  So, certainly, I think that gives a  
13          great deal of power and authority to those  
14          conditions. They're in the agreement. They're  
15          enforceable.

16                  And also there's a specific performance  
17          clause within the agreement that gives the power  
18          to the High Desert Power Project to bring against  
19          the District as a result of a breach of the  
20          agreement.

21                  It reads, paragraph 40, if as a result  
22          of the breach of this agreement by the District  
23          and HDPP has no other adequate remedy at law, the  
24          District agrees that this agreement may be  
25          enforced by HDPP by, without limitation,

1       injunctions and restraining orders. If as a  
2       result of the breach of this agreement by HDPP,  
3       the District has no other adequate remedy at law,  
4       HDPP agrees that this agreement may be enforced by  
5       District by, without limitation, injunctions and  
6       retraining orders.

7               Those are pretty broad-based powers.  
8       I'd also like to indicate that under the  
9       conditions of approval the conditions of concern  
10      about overdrafting the basin or some other such  
11      thing would not occur rapidly.

12             There's extensive requirement in the  
13      conditions for regular reporting and annual  
14      analysis. Such reporting should give any  
15      interested party plenty of time to force specific  
16      action if they feel it is necessary. Certainly  
17      the Fish and Game has directly requested that  
18      those reports be provided to them.

19             I feel, given these controls, that the  
20      condition proposed that the High Desert Power  
21      Project cannot have its own facilities is not  
22      necessary.

23             Regarding the ownership at closure, I  
24      would instead suggest that instead of putting a  
25      condition in the project proposal regarding

1       evaluating who owns facilities at the end, that  
2       those be determined now and put in the conditions  
3       in advance. And I'd recommend that you extend the  
4       existing CEC conditions to the project closure  
5       condition, which would include:

6               Number one, restricting that the project  
7       wells could only be used when offsetting other  
8       production closer to the river. And, number two,  
9       that you would require any use above the baseline  
10      to be replenished with imported water. That would  
11      have a net effect on the groundwater basin of  
12      absolutely no overdraft. Zero. Not a drop.

13             I feel that this project and the  
14      proposed conditions that are in the aquifer  
15      storage and recovery agreement are nothing but  
16      environmentally friendly.

17             And I'll have to say this, that  
18      originally we had not envisioned using the project  
19      wells other than in an emergency. But in response  
20      to questions by Fish and Game, it came to our  
21      awareness that there may be some win/win solutions  
22      that would have worked both for our customers and  
23      for the concerns of Fish and Game. And that had  
24      to do with offsetting production away from the  
25      river.



1                   And given that we developed conditions  
2           that we feel benefit not only our customers and  
3           the community, the groundwater basin, but also the  
4           concerns of Fish and Game.

5                   Regarding the idea of growth-inducement.  
6           In the same manner that power plants are  
7           constructed to meet growing demand, rather than  
8           creating demand, the District also responds to the  
9           demand for water. It seems that any analysis  
10          that's made for adding power or water would be  
11          basically identical.

12                  In our service area we're predicting a  
13          long-range growth of about 3 percent. That growth  
14          will occur whether or not this project is  
15          constructed. And our facilities are constructed  
16          in response to population growth.

17                  We don't feel that this project  
18          infrastructure is growth-inducing because it  
19          doesn't remove an existing restriction on water  
20          use. There's nothing that prevents us from  
21          drilling an unlimited number of wells in this  
22          valley.

23                  We did construct two new wells last  
24          year. We're planning on constructing some more  
25          wells next year. In addition, we are never

1       permitted by a clause that I put in the agreement  
2       to rely upon the project wells for our own  
3       capacity. We will continue to maintain a  
4       completely one-hundred percent independent source  
5       of supply to meet all of our customers' needs. We  
6       will not be relying on the High Desert Power  
7       Project.

8               Lower water rate. There seems to be a  
9       little bit of confusion about that. Basically  
10      there's been some statements made that the use of  
11      project wells could lead to lower water rates, and  
12      thereby induce growth. I wish that were the case.  
13      Unfortunately, it is not the case that this will  
14      result in a decrease of water rates.

15             Just to give you an idea, I'm the one  
16      that's responsible on an annual basis for bringing  
17      a recommendation to our board of directors on  
18      setting rates. And I could tell you, because of  
19      that, what some of the future holds for water  
20      rates in the valley.

21             Based on the analysis that our agency  
22      has done recently, we feel that we need to  
23      substantially reduce the amount of groundwater  
24      that we are using over time. That will be one of  
25      our objectives as we look at our future planning.

1                   So we want to increase our use of  
2           imported water in order to reduce our amount of  
3           groundwater use.

4                   To give you some idea I've got a little  
5           Post-It note over there which is about the biggest  
6           Post-It note I could find, that talks about  
7           growth-inducement.

8                   Some of the discussions by opponents  
9           have talked about a possible production capacity  
10          of 35 acrefeet per year of additional capacity.  
11          So I wanted to give you an idea of what that would  
12          really mean to our community. So that's what that  
13          chart is over there.

14                  If you look, the cost of imported water,  
15          by the time you pay for it, treat it and deliver  
16          it to site, is about \$400 an acrefoot. Right now  
17          there's a cost of imported water at Mojave Water  
18          Agency of \$171 an acrefoot. To give you an idea,  
19          that's a very reasonable number. Last year the  
20          Metropolitan Water District treated water rate was  
21          \$431 an acrefoot. So that's a very realistic  
22          number.

23                  If you take that number times 3500  
24          acrefeet you'll get \$1.4 million. If you compare  
25          that against our cost for native water, right now

1       our agency is buying unused groundwater as  
2       carryover rights at \$35 an acrefoot. If you  
3       multiply that out, it's about \$123,000.

4               So, obviously using the High Desert  
5       Power Project facilities is going to increase our  
6       water costs by over \$1 million every year. It  
7       amounts to about \$80 per customer per year if we  
8       were to take 3500 acrefeet of imported water,  
9       treat it and put it down into the ground. This is  
10      not growth-inducing, not by any means.

11              Now, I think some of the confusion that  
12      has evolved about the idea that it could result in  
13      lower water rates is based on some of the  
14      statements that I've made earlier.

15              We basically operate wells in their most  
16      efficient order based on current customer demand.  
17      We turn our most efficient wells on first, the  
18      second most efficient second; third, fourth, et  
19      cetera.

20              So our intent, having the availability  
21      of project wells that are not being used to meet  
22      the High Desert Power Project, is if we could turn  
23      that water into our system, and we won't know  
24      until we construct them, but it's possible that  
25      some of those wells will have a higher total

1 efficiency than our existing wells closer to the  
2 river. If that's the case, we'd prefer to turn  
3 those on before wells that are closer to the  
4 river. So there is some possible benefit to using  
5 those wells in that order.

6 But using them in that order, although  
7 it produces some financial benefit to us, is  
8 dwarfed by paying for the cost of imported water.  
9 Certainly there will not be, unfortunately, lower  
10 water rates as a result of the project.

11 Regarding the direct use of a water  
12 treatment plant, I'd like to clarify that our  
13 current agreement for storage and recovery  
14 agreement with the High Desert Power Project does  
15 not include the ownership of a treatment plant  
16 where the control of it simply allows us to use  
17 water at cost through that treatment plant for  
18 groundwater recharge.

19 The direct use of a treatment plant by  
20 the Victor Valley Water District, although it's  
21 intriguing to me as an idea, and one I think that  
22 my agency should pursue, is not one that is part  
23 of this project, and is one that would certainly  
24 require additional analysis.

25 In conclusion, I'd like to make a couple

1 points. The first is that on Tuesday of this week  
2 the Victor Valley Water District Board of  
3 Directors voted unanimously to oppose the newly  
4 proposed changes to the conditions. These  
5 conditions basically nullify our executed  
6 agreement with the High Desert Power Project.  
7 Substantial benefits to our customers are lost as  
8 a result of the proposed conditions, and I don't  
9 want to see those benefits lost for our customers.

10 If these proposed conditions remain as  
11 they are, I would have serious doubts about  
12 recommending my agency to enter into a new  
13 agreement with High Desert Power Project. And if  
14 we cannot come to terms that are favorable to the  
15 Victor Valley Water District, I would also  
16 recommend that my agency oppose the placement of  
17 project wells within our service area.

18 And that concludes what I have to say,  
19 and I'll answer all questions.

20 HEARING OFFICER VALKOSKY: Before the  
21 parties, I'd just like a couple points of  
22 clarification, Mr. Hill.

23 EXAMINATION

24 BY HEARING OFFICER VALKOSKY:

25 Q Did I hear correctly that the Victor

1 Valley Water District will not own the treatment  
2 facilities?

3 A That is correct. Our aquifer storage  
4 and recovery agreement does not call for ownership  
5 of the treatment plant by the Victor Valley Water  
6 District.

7 Q Okay. The board's opposition to staff's  
8 newly proposed conditions, regarding that, is  
9 there any gradation in opposition to those  
10 conditions because to my reading condition 6 in  
11 the verification, the addition to condition 6 in  
12 the verification provide for reevaluating the  
13 groundwater study in 30 years, and require that  
14 any future operation of water facilities be  
15 addressed in the project closure plan.

16 Condition deals with the ownership; and  
17 17.4 limits VVWD's use of water facilities.

18 My question to you do you oppose those  
19 proposed conditions?

20 A I can be more specific.

21 Q Pardon?

22 A I can be more specific.

23 Q Okay.

24 A Item 5-B I think is something that we  
25 would remove our opposition immediately as soon as

1 we spell our name correctly.

2 (Laughter.)

3 MR. HILL: The verification of Soil and  
4 Water 6 is linked to project ownership, and we're  
5 opposed to the verification because we feel that  
6 the disposition of the project facilities should  
7 be determined in advance to enable us to have  
8 ownership of them.

9 Soil and Water condition 7 is a similar  
10 concern, ownership of the facilities.

11 And the dreaded 17.4, which is a deal  
12 killer, is the allowance of the water treatment  
13 plant for groundwater recharge.

14 BY HEARING OFFICER VALKOSKY:

15 Q So, in other words, again, just 6-D, I  
16 guess it is, reevaluating the groundwater study,  
17 you have really no opposition to?

18 A No, the other conditions we have no  
19 opposition to.

20 Q Okay. And you oppose the other three  
21 staff conditions now, okay.

22 A And the proposed conditions that Fish  
23 and Game have in their letter are not a problem.

24 Q Okay. Fish and Game proposals are okay.  
25 You mentioned, and I would like you to explain a



1       little bit further for the Committee's benefit,  
2       extending the coverage of certain of the existing  
3       proposed conditions concerning the use of the  
4       baseline, conditions 1 and 2, I believe you  
5       mentioned?

6           A     I'm sorry, say again?

7           Q     You mentioned extending, or at least my  
8       notes say extending the coverage of certain of the  
9       existing conditions in your testimony regarding  
10      the use of the baseline, or clarifying the  
11      existing conditions.

12                I mean that's what I heard and I want  
13      some clarification on it.

14           A     Can you ask it another way? I'm still  
15      not getting the question.

16           Q     I'm not sure I can, but if it comes to  
17      me I'll repeat it. In thrust, a portion of your  
18      testimony seemed to me to be a suggestion that one  
19      of the methods of dealing with some of the  
20      apparent problems was to further specify in the  
21      proposed conditions the applicability of the  
22      computation for the use of the baseline water  
23      amount?

24                MR. THOMPSON: Could you have been  
25      talking about conditions that relate to the first

1       30 years versus conditions after that time? I'm  
2       striking out, too?

3               MR. HILL: I'm not following.

4               MR. CARROLL: I thought there was  
5       testimony, or a suggestion that the conditions of  
6       approval applicable to the first 30 years be  
7       extended to the post-closure period.

8               MR. HILL: Oh, thank you. Yeah, my  
9       suggestion was --

10              HEARING OFFICER VALKOSKY: Thank you,  
11       Mr. Carroll.

12              MR. HILL: -- was related to ownership  
13       of the facilities. One of the conditions right  
14       now on the project is that the determination of  
15       ownership be also addressed at project closure.

16              Since I'm arguing that we should have  
17       the ability to own the project facilities up  
18       front, when I'm proposing to address the concerns  
19       of what happens to the project facilities post-  
20       closure of the High Desert Power Project facility,  
21       is you determine that up front, what happens to  
22       those wells after closure of the project.

23              And what I'm saying is you just set the  
24       conditions right now that on closure the same  
25       conditions apply, which is that you cannot use the

1 project wells unless you offset production closer  
2 to the river, and you cannot use the project wells  
3 unless you -- if you over-produce that amount, you  
4 replenish it with imported water.

5 And the intent of that condition  
6 established in advance is to assure that those  
7 project facilities will never be used to  
8 contribute to the existing groundwater overdraft  
9 in the area.

10 Does that --

11 HEARING OFFICER VALKOSKY: Okay, thank  
12 you. Mr. Thompson, do you have anything further?

13 BY PRESIDING MEMBER LAURIE:

14 Q Wait, wait, wait, wait. Question. Mr.  
15 Hill, you mentioned the benefit of this project to  
16 your ratepayers. What kinds of benefits were you  
17 referring to from this project?

18 A There are multiple benefits. The  
19 benefits that I'm concerned about losing  
20 particularly is the ability to recharge an  
21 overdrafted groundwater basin. It's one of our  
22 objectives to reduce the amount of groundwater  
23 that we take from the ground. And the ability to  
24 treat water and put it back in the ground is  
25 something that's very valuable to us.

1           Q     Okay, and how will this project help you  
2     do that?

3           A     Well, the availability of treated water  
4     for injection is something that we do not have  
5     now.

6           Q     Okay. Now, do you understand the  
7     concern expressed by the agencies, and I think Mr.  
8     Ledford, is that use of that injection water will,  
9     in fact, be utilized for the purposes of adding to  
10    your water supply, and thus being made available  
11    to your customers?

12                   My understanding is that's the concern.  
13    And the question is how do you insure that that  
14    won't happen?

15           A     No, I think the question is whether or  
16    not that induces growth. And we will pump water  
17    out of the ground regardless of whether or not we  
18    can refill it with imported water, because our  
19    responsibility is to meet the water demand of our  
20    customers.

21                   And our groundwater production is  
22    directly related to the water demand of our  
23    customers. In the same way that a power project  
24    provides power for the demands of California.

25                   PRESIDING MEMBER LAURIE: Fine.

1 BY HEARING OFFICER VALKOSKY:

2 Q Okay, so then it is your testimony that  
3 the facilities built in conjunction with the High  
4 Desert Project would be used solely for  
5 reinjection purposes?

6 A That is correct.

7 HEARING OFFICER VALKOSKY: Mr. Thompson,  
8 anything else?

9 MR. THOMPSON: No, sir.

10 HEARING OFFICER VALKOSKY: Ms. Holmes?

11 MS. HOLMES: No questions.

12 HEARING OFFICER VALKOSKY: Mr. Adams.

13 MR. ADAMS: Just a few, yeah.

14 CROSS-EXAMINATION

15 BY MR. ADAMS:

16 Q Just to follow up on the questions asked  
17 a minute ago, if the treatment plant and wells are  
18 being used to inject, and just for clarification  
19 the wells will also be used pursuant to Soil and  
20 Water 17 to withdraw, right, to take water out,  
21 offsetting production near the river, if the  
22 facilities are being used to inject water, does  
23 that increase Victor Valley Water District's  
24 overall capacity to deliver water?

25 In other words, by injecting water

1       aren't you then allowed to, under the  
2       adjudication, withdraw more water?

3           A     The adjudication does not limit our  
4       production of groundwater.  There is no limitation  
5       on us and how much groundwater we can produce.

6           Q     But wouldn't it require replacement of  
7       water over a certain amount, if your production  
8       exceeded a certain amount, wouldn't you have to  
9       replace it?

10          A     Certainly.

11          Q     So doesn't this somehow work to increase  
12       the total capacity of the district to deliver  
13       water to customers?

14          A     No, because our capacity to deliver  
15       water is the construction of new wells of which we  
16       have no restriction on.

17          Q     Well, separating well capacity issue  
18       from the actual production, it just seems -- now,  
19       not knowing the adjudication, obviously, from the  
20       generality of the question, it just seems that if  
21       you have the ability to put a lot of water into  
22       the ground that that increases your allowance,  
23       your ability to pull water out of the ground and  
24       deliver it to customers.  Aren't you given credit  
25       for that?

1           A     Let me explain how that may work, it may  
2     benefit others in the room, as well. The  
3     adjudication established a water master. That is  
4     the party which is responsible for managing the  
5     basin.

6                     Part of their responsibility is to  
7     manage groundwater storage. What we would do with  
8     the injected water is put it into a storage  
9     account with the Mojave Water Agency.

10                    Now, there's not currently an agreement  
11     between our agency and the water master. That  
12     agreement would need to be in place before we can  
13     store water into an account and obtain a credit  
14     for it.

15                    But the principal idea is that you take  
16     imported water when it's ample and available on  
17     the state system, you take it in advance and store  
18     it in the ground for future use.

19            Q     Okay. I think that helps, to some  
20     degree, my understanding. Although not entirely.

21                    You heard my questions earlier of Mr.  
22     Welch about the 1000 acrefeet that Soil and Water  
23     7 require be left in the ground at the time of  
24     project closure?

25                    Actually, that misstates it. It says

1       that 1000 acrefeet -- I've got the wrong number,  
2       as well.

3               Well, we talked about this prior to the  
4       hearing, it pertains to 11.2 in your water storage  
5       agreement, and the provision that any water  
6       remaining in storage will become the property of  
7       the district.

8               Could you tell us the district's intent  
9       as far as whether that includes the 1000 acrefeet  
10      that High Desert is required under condition Soil  
11      and Water 7 to leave in the water bank?

12              A     I'd be glad to. Basically the intent of  
13      the agreement is if that the High Desert Power  
14      Project leaves the area and they leave groundwater  
15      in storage, we looked at that as an opportunity to  
16      obtain that for our customers. And so we asked  
17      them to include a provision which they would  
18      unlikely to leave the water in the ground, but if  
19      they were, that it would become ours.

20              It was not intended to include that 1000  
21      acrefoot. The confusion is because of the  
22      proximity of that statement to the discussion of  
23      the 1000 acrefeet.

24              Just to provide you some assurance of  
25      that, an area that I quoted earlier, which is on



1 injection, specifically incorporates Soil and  
2 Water 6 into the agreement, specifically paragraph  
3 8 of our agreement says, "subject to California  
4 Energy Commission conditions of certification Soil  
5 and Water 4, 6, 7 and 5 attached in exhibit D, and  
6 incorporated herein by reference."

7 And just to refer you back to what Soil  
8 and Water 6 says, it specifically states that, "At  
9 no time may the balance of banked water decline  
10 below 1000 acrefeet, and the remaining balance of  
11 1000 acrefeet banked in the groundwater system at  
12 closure."

13 So it's already in our agreement by  
14 explicitly attaching and incorporating the CEC  
15 conditions.

16 Q Yeah. The Committee probably doesn't  
17 want to hear us debate the terms of the agreement  
18 anymore after the last hearing, but I certainly  
19 think -- the only reason I'm asking about intent  
20 is I think the provision in that section of the  
21 agreement can certainly be read to include the  
22 1000. So I appreciate your clarification of that.

23 Finally, your suggestion of applying the  
24 same restrictions on use of project wells after  
25 the 30 years, or after closure, I think is a very

1 attractive proposal, or solution, to the disputed  
2 condition.

3           However, if you have any thoughts on how  
4 the Commission can go about enforcing that, or  
5 having that happen, I think that's what has all of  
6 us stumped, that because there's really no  
7 regulatory relationship between Victor Valley  
8 Water District and the Commission, how do we --  
9 how does the Commission address impacts that might  
10 occur after High Desert isn't around anymore?

11           A     I'm not an attorney, but I'm open to  
12 suggestions. If you have a contractual  
13 arrangement that you feel establishes that?

14           Q     I think it's a tough one, that's why I  
15 thought maybe you had some ideas.

16           MR. ADAMS: That's all my questions,  
17 thanks.

18           PRESIDING MEMBER LAURIE: Well, let me  
19 ask Mr. Valkosky, contracts are voluntary. Is  
20 there any reason why, as a condition to approval,  
21 or a condition to some subsequent event, there has  
22 to be shown a contractual relationship between the  
23 District and the Energy Commission providing for  
24 and satisfying our needs for validation?

25           HEARING OFFICER VALKOSKY: I think in a

1 more general term that is, and that, please,  
2 staff, correct me if I'm wrong, but that is the  
3 type of thing that was intended to be encompassed  
4 in the verification to condition 6, which required  
5 an examination of the future operation and  
6 ownership of the water facilities to be addressed  
7 in the closure plan. Is that correct?

8 MS. HOLMES: We were not anticipating a  
9 contractual arrangement between the Energy  
10 Commission and Victor Valley Water District.  
11 That's certainly one of the options that we  
12 discussed earlier on, and I believe it's one  
13 that -- it is an avenue that's available to the  
14 Commission.

15 Commission Staff and particularly the  
16 compliance unit has always been very very  
17 reluctant to either become third party  
18 beneficiaries to contracts or enter directly into  
19 contracts. In other words, between the Energy  
20 Commission and other agencies, because we haven't  
21 wanted to get involved in the business of contract  
22 enforcement.

23 It's not an area in which we have a lot  
24 of expertise, and it would be a considerable  
25 resource drain.

1           I understand a lot of Mr. Hill's  
2       concerns, and I think Mr. Buell will be testifying  
3       about them later. But we have tried to avoid a  
4       situation in which the staff recommends that the  
5       Energy Commission enter into a contract with VVWD  
6       For practical reasons.

7           I'm not aware of any legal impediment.

8           HEARING OFFICER VALKOSKY: But aside  
9       from the contractual relationship, as I understood  
10      that verification could have been one of the  
11      possibilities which would have been explored at  
12      that time, is that not correct?

13          MS. HOLMES: I'm not understanding your  
14      question, Mr. Valkosky, I'm sorry.

15          HEARING OFFICER VALKOSKY: Okay. The  
16      verification that you're proposing to condition 6,  
17      as I understood it that would just be essentially  
18      an evaluation of what do you do with the water  
19      facilities after the present applicant goes away,  
20      right?

21          MS. HOLMES: That is correct. It's  
22      really no different than what we do --

23          HEARING OFFICER VALKOSKY: Exactly.

24          MS. HOLMES: -- in reviewing any other  
25      part of the project --

1 HEARING OFFICER VALKOSKY: Right.

2 MS. HOLMES: -- when there's a closure  
3 plan.

4 HEARING OFFICER VALKOSKY: And within  
5 the scope of that, one of the logical alternatives  
6 would have, could have been entering into a  
7 contractual relationship, is that not correct?

8 MS. HOLMES: That's certainly an  
9 alternative, yes.

10 HEARING OFFICER VALKOSKY: Right. And  
11 staff's suggestion was essentially to defer that  
12 analysis until three years prior to expected  
13 project closure?

14 MS. HOLMES: That's correct.

15 HEARING OFFICER VALKOSKY: Okay, thank  
16 you. Anything further, Mr. Adams?

17 MR. ADAMS: No.

18 HEARING OFFICER VALKOSKY: Mr. Ledford.

19 CROSS-EXAMINATION

20 BY MR. LEDFORD:

21 Q Mr. Hill.

22 A Hi, Gary.

23 Q Can I call you Randy?

24 A Sure, Gary.

25 Q Can you tell me how many acrefeet a year

1       that your district produces?

2           A     Our current average annual demand is  
3       between 15,000 and 16,000 acrefeet per year.

4           Q     And of that 15,000 to 16,000 acrefeet,  
5       based on the current USGS reports, how much of  
6       that is overdrafting the regional aquifer?

7           A     I don't know that the study that was  
8       done by USGS broke out over-production by agency,  
9       so I don't know the answer to that.

10          Q     Are any of the wells that are within  
11       your district naturally recharged by the flood  
12       plane aquifer?

13          A     By the Mojave River?

14          Q     Correct.

15          A     My understanding is that there is some  
16       limited interaction between the Mojave River and  
17       the regional basin, but it's not a very strong  
18       connection. The bulk of my wells do not seem to  
19       be obtaining the benefit of recharge at Rock  
20       Springs.

21          Q     I think that it's fair to say that this  
22       water treatment facility, the water treatment  
23       project at the power plant would produce a  
24       potential benefit of 3500 acrefeet of water that  
25       you could inject into your basin on an annual

1 basis?

2 A I agree with that.

3 Q And based on your ability to raise  
4 funds, would it be your intent to inject that  
5 water?

6 A It would certainly be one of the  
7 strategies available to us as an agency. It's a  
8 very expensive process to do, as you can see. So  
9 one of the challenges that my agency faces in the  
10 coming years is how to gradually wean ourselves  
11 off a serious overdraft. And there's a cost  
12 impact associated with that.

13 Q Would it be fair to say that you have  
14 advised your agency that water injection -- water  
15 treatment and water injection are going to be the  
16 solution to providing for a continuous water  
17 resource for your agency in the future?

18 A My water supply plans include the use of  
19 a treatment plant directly, not this one, but  
20 another one up by the aqueduct. Includes  
21 groundwater recharge. It includes the use of  
22 recycled water, and increased use of conservation.  
23 All four components are needed for a future water  
24 supply.

25 Q Right. And you understand that my

1 concern in these proceedings principally is the  
2 use of water for evaporation and the consumptive  
3 use requirements for replacement water within the  
4 basin?

5 A Yes, I assume you're not opposed to  
6 recharging the basin with imported water?

7 Q That's correct.

8 A Thank you.

9 Q I didn't know you could ask me  
10 questions, but I guess that works.

11 (Laughter.)

12 BY MR. LEDFORD:

13 Q Well, I sort of get blamed for opposing  
14 the project, and that's --

15 A I appreciate your support in that area.

16 Q -- and you testified earlier that I  
17 showed up to oppose the project. My opposition,  
18 of course, is that the project -- there is a  
19 project that I oppose, at least at this juncture,  
20 and my opposition is in approving a project that  
21 hasn't had adequate CEQA analysis.

22 And the project that's being proposed is  
23 one that not only the power project has a benefit  
24 from, but also the district. And whether growth-  
25 inducing or cumulative, there's a number of



1 impacts that haven't been studied.

2 And it would be fair to say that  
3 whatever impacts have been studied have not been  
4 studied for longer than 30 years, would you agree  
5 with that?

6 A Oh, I'm sorry, I didn't -- can you  
7 repeat the question?

8 Q Sure.

9 A I thought you were making a statement.

10 Q Would it be fair to say that for  
11 whatever project benefits relative to the water  
12 treatment facility within the power project have  
13 not been studied for longer than 30 years?

14 A I think the power project people have  
15 only been studying it for a few years.

16 Q I'm talking about the staff analysis  
17 from the standpoint of CEQA.

18 A I believe the period that was looked at  
19 was 30, but I'm not an expert in that area.

20 Q Can you tell me if you've been  
21 experiencing water quality problems in your wells?

22 A No, we have not been experiencing water  
23 quality in our wells with respect to natural  
24 sources of water, as far as what's native in the  
25 groundwater, mineral content, that type of thing.

1                   We have had a problem within our wells  
2       recently of bacteria contamination coming from the  
3       outside.

4           Q     Okay. Relative to water rates, when you  
5       begin injecting water, what is your projection for  
6       water rates to your customers over the next five  
7       years?

8           A     That is a difficult question to answer,  
9       and certainly one that will be the subject of much  
10      discussion between myself and our directors. And  
11      I don't have an answer to you, because I haven't  
12      discussed it with my board.

13          Q     I had asked Mr. Welch some questions  
14      relative to exhibit 1, to the contract, or exhibit  
15      A.

16          A     Okay.

17          Q     The one I don't actually have, but have  
18      a similar one. And on this figure 1 there is an  
19      interconnected pipeline that says existing 18-inch  
20      pipeline. Is that existing 18-inch pipeline a  
21      part of your municipal system at the present time?

22          A     No, actually it's owned by the City of  
23      Victorville, and I believe that's the Southern  
24      California Logistics Airport line. There is a  
25      memo of understanding between our agency and the

1 city that we will wholesale a limited amount of  
2 water to the city at that connection. And they  
3 own that pipeline. The connection point's at -- I  
4 don't remember exactly where the connection point  
5 is, but --

6 Q I possibly didn't posture that question  
7 very well. Is the pipeline for municipal  
8 purposes? Maybe that's a --

9 A The pipeline is to supply water to the  
10 City of Victorville. I don't know what their  
11 intended use is for the water.

12 Q Okay. Does the pipeline carry potable  
13 water?

14 A Yes, it will.

15 Q All right. Now on this particular  
16 diagram it shows that pipeline connecting to the  
17 new pipeline, the new High Desert Power pipeline  
18 that travels south, is that the intent?

19 A No, I had no intention, as far as I knew  
20 of, of connecting the seven High Desert Project  
21 wells pipelines in a loop system to that SCLA  
22 pipeline.

23 Q So if you looked at this plan you  
24 wouldn't get that interpretation from it?

25 A No, that's not the intent.

1           Q     So, is the pipeline that -- there's much  
2     more than six miles of pipeline that's drawn on  
3     this plan if these section lines equal a mile.

4           A     I'm not sure of the exact quantity of  
5     pipeline. I'd believed it was about six miles.

6           Q     And it's not intended that this be a  
7     loop system?

8           A     No, it's not.

9           Q     So all of the wells that are shown on  
10    this pipeline on this plan are only for the  
11    purpose of providing water to or from the water  
12    treatment facility and the power project?

13          A     That's their primary intent. There also  
14    would be a connection somehow to our distribution  
15    system to enable us to offset production closer to  
16    the river and take it into our system. Those  
17    connection points have not been studied or  
18    determined.

19          Q     But how would you do that?

20          A     We would connect the pipe from our  
21    system to theirs.

22          Q     I understand, but what the power project  
23    people have told us here is that they don't intend  
24    to provide the water to drinking water standards,  
25    that wouldn't be their intent.

1                   So if they put water that was not  
2           qualified to be treatment water into that  
3           pipeline, and you took that pipeline and injected  
4           the water into the ground, but then tomorrow you  
5           decided that you needed to extract the water out  
6           of the ground, you'd still have residual pipeline  
7           problems, you can't have nontreated water in the  
8           pipelines --

9           A     No, I think --

10          Q     -- and use it for municipal purposes --

11          A     I believe that the water that will be  
12       treated will have to be treated to potable water  
13       standards because I believe that's what the  
14       regional board will require.

15          Q     And once that happens --

16          A     Because I'm familiar with the  
17       requirements for injected water, and it has to be  
18       potable water standards to be injected.

19          Q     I kind of have a propensity to believe  
20       that that may be the case, as well, but given  
21       that, which is where I was headed, once you have a  
22       pipeline, an 18-inch pipeline that has treated  
23       water in it, there isn't any reason why that  
24       treated water can't just go out to your system?

25          A     That would be a possibility, but it's

1       certainly not a part of this analysis. And if  
2       that were to be done, it would require a separate  
3       CEQA analysis.

4           Q     But how would anybody know?

5           A     I don't know.

6           Q     Relative to the issue of consumptive  
7       use, what would be the District's position on the  
8       water that was banked in the ground?

9           A     I don't understand the question, Gary.

10          Q     We've had this discussion and I'm not  
11       sure how awkward I am at posing the question, but  
12       the position of one or more water agencies has  
13       been that if they purchased water, treated it and  
14       put the water in the ground that that water would  
15       not be subject to the consumptive use requirements  
16       within the judgment. And that would include  
17       paying replacement water obligations and the like.

18          A     My understanding in the adjudication  
19       with respect to consumptive use, it has to do with  
20       the change of existing use of groundwater, and if  
21       you move the groundwater source from an industrial  
22       use to residential, or something, there's an  
23       analysis done by water master to determine if  
24       there is an increase of consumptive use.

25          Q     Correct. I still haven't postured this

1 well enough for you. The issue would be would the  
2 District ask for a credit for banked water?

3 A The banked water is not a credit, it's  
4 accredited to a storage account.

5 Q Right.

6 A Yes.

7 Q If the water flowed through your sewer  
8 lines to the waste treatment plant would you  
9 assume that that water belonged to you?

10 A Oh, that's a totally different question  
11 than your first one.

12 Q Yes, it is.

13 A No. As I understand it, that water  
14 first belongs to the customer, then belongs to the  
15 city, then belongs to the reclamation authority.

16 Q So you would not be intending to make a  
17 claim?

18 A I'd love to, but I can't.

19 Q Okay.

20 MR. LEDFORD: I think that concludes my  
21 questions for the moment.

22 HEARING OFFICER VALKOSKY: Thank you,  
23 Mr. Ledford. Are there any other questions for  
24 Mr. Hill?

25 Okay, Mr. Hill, thank you very much.

1 MR. HILL: Can I go to Disneyland now?

2 HEARING OFFICER VALKOSKY: You can go to  
3 Disneyland.

4 (Laughter.)

5 MR. HILL: That's where my family is  
6 right now, and I was supposed to be with them, so.

7 MR. THOMPSON: I might add that Mr.  
8 Hill's agency is closed today and this is a  
9 voluntary appearance on a day when he should be  
10 with his family.

11 MR. HILL: Voluntary?

12 MR. THOMPSON: Well, --

13 (Laughter.)

14 MR. THOMPSON: -- quasi-voluntary.

15 HEARING OFFICER VALKOSKY: Well, again,  
16 on behalf of the Committee, we thank you, Mr.  
17 Hill.

18 MR. LEDFORD: Thank you, Randy.

19 HEARING OFFICER VALKOSKY: Mr. Thompson,  
20 does that conclude your presentation of witnesses?

21 MR. THOMPSON: It does. And I would  
22 like to move into the record exhibits 143, 144 and  
23 145.

24 HEARING OFFICER VALKOSKY: Are there  
25 objections? Staff?



1 MS. HOLMES: No objections.

2 MR. ADAMS: No objections.

3 HEARING OFFICER VALKOSKY: Mr. Ledford?

4 MR. LEDFORD: I have an objection to the  
5 extent that the exhibits are either redacted or  
6 that they are not inclusive of all the exhibits  
7 that are proffered within the exhibits.

8 I believe that the lease, the option to  
9 lease should have all the exhibits attached that's  
10 appropriate.

11 And I specifically think that the  
12 redaction of what the costs of air quality credits  
13 on a public agency's document are not appropriate  
14 for this proceeding.

15 The applicant has provided some  
16 financial information in their latest filing that  
17 they made a part of the record. I can't see a  
18 reason for any secrecy in the balance of it.

19 I don't object to the exhibits provided  
20 that they're complete.

21 HEARING OFFICER VALKOSKY: Okay. I  
22 would note that specifically insofar as the costs  
23 of the emission offset credits, that is typically  
24 considered confidential within Commission  
25 proceedings. So I'm going to overrule the

1 objection to that effect.

2 As to the redaction, as you phrase it, I  
3 would note that at least one of the exhibits  
4 refers to materials, specifically exhibit 65,  
5 which is already part of the record. Your  
6 objection is noted insofar as the lease agreement,  
7 and we'll accept it for what it purports to be, an  
8 option, at this time.

9 With that, those exhibits are admitted.

10 MR. THOMPSON: Thank you.

11 HEARING OFFICER VALKOSKY: Ms. Holmes.

12 MS. HOLMES: We would recall Mr. Buell.

13 DIRECT EXAMINATION

14 BY MS. HOLMES:

15 Q Good afternoon, Mr. Buell. Did you  
16 prepare the water portion of exhibit 146A, as well  
17 as exhibit 176?

18 A Yes.

19 Q And my understanding is that 176 is  
20 corrections to the water portion of 146A. Do you  
21 have additional corrections to make at this time?

22 A Yes, I have some additional corrections.  
23 I might start with soils and water condition  
24 number 4 which appears on page 7. Part A, the  
25 last sentence, which reads during the period the

1 project owner may pump banked groundwater that is  
2 available to the project, as determined by soils  
3 and water condition 5.

4 That is redundant, I propose to strike  
5 that.

6 Q Do you have any additional corrections?

7 A Yes, I do. Soils and water number 5,  
8 part B, I'd make a correction to the spelling of  
9 Victor Valley Water District --

10 (Laughter.)

11 MR. BUELL: Soils and water A, I would  
12 adopt the errata that was proposed by Fish and  
13 Game, which namely is to add the phrase "and minus  
14 any amount described in soils and water 5B" to the  
15 end of part A.

16 Likewise, I would add that phrase to the  
17 end of part B of condition 6.

18 And lastly, on condition, soils and  
19 water condition number 18 on page 14, the very  
20 last line refers to soils and water condition  
21 17.2, that should read 17.1, Roman numeral ii.

22 That is the errata that I have.

23 BY MS. HOLMES:

24 Q And with those corrections is your  
25 testimony true and correct?

1           A     Yes, it is.

2           Q     And do the opinions contained in it  
3 represent your best professional judgment?

4           A     Yes, they do.

5           Q     Could you please summarize your  
6 testimony?

7           A     First, I'd like to explain that I  
8 believe there's a lot of confusion and concern  
9 about why it took staff so long to identify  
10 potential impacts of the project.

11                I'd like to explain that although staff  
12 knew that the Victor Valley Water District was  
13 going to own the project facilities, it wasn't  
14 until the October 7th and 8th hearings that staff  
15 understood that VVWD intended to operate these  
16 facilities for purposes of than to supply the High  
17 Desert Power Project. And at that hearing VVWD  
18 identified that they were for emergency  
19 conditions.

20                In December and January of this year  
21 staff worked with the Department of Fish and Game,  
22 VVWD and the High Desert applicant to draft  
23 conditions to address VVWD's use of the wells.

24                And we learned at that time that VVWD  
25 intended to -- did not want to limit the operation

1 of those facilities to emergency conditions.

2 At that time staff considered growth-  
3 inducing impacts from what I would call normal  
4 operation of those wells as described in  
5 conditions 5 and 17. We believed that we had  
6 addressed those growth-inducing impacts from,  
7 quote, "normal" operations.

8 However, at the last hearing in  
9 Victorville on the 27th of January, we were made  
10 aware of potential issues by Mr. Ledford regarding  
11 growth-inducing impacts. At that time we realized  
12 that we had failed to consider some of the aspects  
13 of Victor Valley Water District's use.

14 Namely, we had not considered Victor  
15 Valley Water District's use of wells if the High  
16 Desert Power Project were to close prematurely,  
17 Victor Valley Water District's use of the water  
18 treatment facility. The potential for High Desert  
19 or Victor Valley to operate the wells for more  
20 than 30 years.

21 And we failed also to realize the  
22 implication of VVWD's ownership of the wells in  
23 conjunction with their operation of the wells.  
24 This latter point is particularly important  
25 because the Energy Commission has jurisdiction

1 over construction and continuing use of project  
2 facilities.

3 And second, because we need to have  
4 conditions that we can place upon the applicant  
5 which are enforceable. And conditions upon a  
6 third party, such as VVWD, raise concerns which we  
7 have elaborated earlier in this hearing.

8 This was an oversight on staff's part.  
9 I am responsible. And I feel particularly  
10 responsible since I went to the VVWD's Board  
11 hearing on the 18th of this year and told them  
12 that I had no problems with any of the conditions  
13 that were laid out at that time.

14 It was an oversight. I guess I owe both  
15 Mr. Randy Hill and his Board an apology for that.

16 At this point I think it's important for  
17 us to focus on the fact that the project has  
18 potential growth-inducing impacts that staff has  
19 not yet identified from the operation of the wells  
20 and the water treatment facility.

21 We also want to emphasize that these are  
22 reasonably foreseeable operations of the project,  
23 as discussed here today. I think Mr. Hill has  
24 identified that there's a likelihood that they  
25 would inject water for the purposes of storing

1       that water for later sale to their customers as  
2       potentially a growth-inducing additional increase  
3       in supply for the district.

4               I would have to agree with Mr. Welch  
5       that the soils conditions 5 and 17 mitigate  
6       potential growth-inducing impacts from normal  
7       operation. But we haven't dealt with the closure  
8       of the facility at this point, and how the  
9       ownership of the wells would be dealt with at that  
10      point.

11             Staff believes there's two ways that we  
12      could address this. We could ask for additional  
13      time to conduct the analysis of the growth-  
14      inducing impacts. It's by no means conclusive  
15      that we'd find that there's a significant impact.  
16      But we need to do that in an analysis.

17             In lieu of doing that we could adopt  
18      conditions of certification that would preclude  
19      those growth-inducing impacts from occurring in  
20      the first place. And that's what staff has  
21      included in its proposed conditions of  
22      certification, measures that we think are  
23      necessary to limit that potential from happening.

24             That is to add a new condition to  
25      revisit the water study after 30 years; to add a

1 new condition requiring the applicant to maintain  
2 ownership of the water facilities, including the  
3 water treatment facility. To add a new condition  
4 requiring future operation of water facilities to  
5 be addressed in a closure plan once the project  
6 reaches closure.

7 And, lastly, to add a new condition  
8 limiting VVWD's use of the water treatment  
9 facilities to emergency conditions.

10 I'd like to make one small clarification  
11 to the statement that has been pointed out by Andy  
12 Welch in his summary regarding table 1, and the  
13 statement that there is a significant probability  
14 of the project failing due to unavailability of  
15 state water project water.

16 When I drafted that I didn't mean to be  
17 making a statement on the likelihood of the  
18 project's failure. What I was trying to say is  
19 that if the project were to fail, it would likely  
20 be due to the lack of water availability. That  
21 that was the primary reason I would see the  
22 project failing, is that there would be an  
23 unavailability of water. I have, today, I think,  
24 taken a position on the probability of the project  
25 failing, however.



1                   With that, that would conclude my  
2                   summary of my testimony.

3                   BY MS. HOLMES:

4                   Q     Mr. Buell, you were involved in the  
5                   development of the condition and also helped staff  
6                   provide comments on the aquifer storage and  
7                   recovery agreement.

8                             Has VVWD expressed a strong interest in  
9                   using some portions of the water treatment  
10                  facilities?

11                  A     The testimony that I heard today was  
12                  that they have an interest in using those. It's  
13                  identified in the aquifer and storage agreement in  
14                  a couple of places.

15                             It is also identified to the sections  
16                  that Andy Welch identified. It's also discussed  
17                  in section 10.3, which identifies that in the  
18                  event the district enters into a groundwater  
19                  storage agreement with MWA, Mojave Water Agency,  
20                  which provides for storage of water beyond that  
21                  required for the project, the High Desert Power  
22                  Project shall be responsible for reimbursing the  
23                  district only for those costs associated with  
24                  storing water for the benefit of the project,  
25                  meaning the High Desert Project.

1                   So, those clauses, in addition to 8.3, I  
2           think establish that there's an interest from VVWD  
3           for using the water treatment facilities.

4           Q     And did that lead you to conclude that  
5           their use, in fact, is reasonably foreseeable?

6           A     Yes.

7           Q     When you were working with VVWD to  
8           develop language for the aquifer storage and  
9           recovery agreement, did you start on the premise  
10          that VVWD was interested in using facilities for  
11          emergency purposes only?

12          A     We started with that premise, although  
13          it became evident rather soon that there was other  
14          benefits that VVWD would like to take advantage  
15          of. And we had drafted the conditions of  
16          certification to allow that broader use.

17          Q     So they were opposed to the use of a  
18          condition that would limit their use to emergency  
19          purposes only?

20          A     That's my recollection.

21          Q     There was a discussion earlier this  
22          morning, I think it was a member of the public  
23          making a comment, about the risk associated with  
24          HDPP retaining ownership of the wells.

25                   Can you briefly explain the compliance

1 conditions that would insure that HDPP's ownership  
2 would not result in violation of the conditions?

3 A I'm not sure I understand your question.

4 Q I was just hoping to get something on  
5 the record in response to somebody's -- a member  
6 of the public's concern about HDPP retaining  
7 ownership of the wells, thereby being able to  
8 avoid compliance with certain conditions.

9 A Yes. I think the term that was used  
10 was the hen guarding the -- the fox guarding the  
11 hen house, excuse me, I got my analogy backwards.

12 The Energy Commission Staff feels that  
13 it would be -- that we are the responsible agency  
14 for insuring compliance with the project  
15 conditions.

16 We have often used self-monitoring  
17 requirements or self-enforcing conditions of  
18 certification with various applicants, and we've  
19 found that that's successful, has been successful  
20 for many years.

21 I don't view this as giving control back  
22 to the applicant for compliance of those  
23 facilities, or with the conditions of  
24 certification. Staff or the Energy Commission  
25 will insure the compliance with those conditions.

1           Q     Thank you. We also had some discussion  
2     earlier today about the risk of failure. You  
3     alluded to that a few moments ago in your summary.  
4     Could you please explain how the risk of failure  
5     that you described affected your testimony on the  
6     potential for growth-inducing impacts?

7           A     It affected it in two ways. One is that  
8     I felt that there was a potential that this  
9     project could fail prematurely. And as I said  
10    earlier, primarily due to the lack of water  
11    availability.

12                   And in looking at that I felt it was an  
13    appropriate scenario to examine what would happen  
14    to the project facilities after that closure.  
15    What conditions of certification could the Energy  
16    Commission apply that would dictate the use of  
17    those wells after the project closed, because  
18    obviously they would still have some value.

19                   And at that time it became evident that  
20    we wouldn't have any hook, if you will, over the  
21    ownership of those wells, other than if it was to  
22    the applicant.

23                   The other thing is that in evaluating  
24    the probability of growth-inducing impacts we also  
25    wanted to make a consistent assumption if there

1       were a high probability that the project would  
2       fail due to the unavailability of water, how did  
3       that relate to future growth-inducing impacts.  
4       And did that make it less or more likely.

5           Q     Thank you.  There was a discussion  
6       earlier this afternoon on limiting the capacity of  
7       the water facilities to certain design  
8       specifications.

9                   Is it your understanding that there  
10      would be a different capacity if it were based on  
11      peak demand versus annual average demand?

12          A     I understand that the facility would  
13      need to be designed to peak capacity to meet peak  
14      water demand during various scenarios.  Namely,  
15      for example, supplying both the project cooling  
16      water supply and also injecting water pursuant to  
17      the storage requirements.

18          Q     And does that mean that when there is a  
19      peak demand, there's excess capacity?

20          A     That is correct.

21          Q     Thank you.  There was also a discussion  
22      earlier today about whether or not the water that  
23      was injected would meet drinking water standards.  
24      Do you recollect the statements of the regional  
25      water quality control board on that issue that

1       were filed with the Energy Commission last year?

2           A     It's my recollection that the regional  
3       water quality control board, the Lahontan Regional  
4       Water Quality Control Board, required that the  
5       water injected by the project meet drinking water  
6       standards.

7           Q     Thank you.  There's also been some  
8       discussion today about whether or not the Energy  
9       Commission should deal with closure conditions at  
10      the time of licensing.

11                  Staff hasn't recommended that.  Can you  
12      explain why we'd like to address specific closure  
13      conditions at the time that closure's being  
14      proposed?

15           A     There's a number of reasons.  One is you  
16      never know what the situation that brought about  
17      closure was.  You don't know, can't always  
18      reasonably foresee what the circumstances are.

19                  The second reason is the regulations  
20      change, requirements change.  That the, for  
21      example in this case, the adjudication may have  
22      been modified by that date, and have entirely  
23      different requirements that would nullify or  
24      change the nature of what we would think are  
25      appropriate conditions to place on that future use

1 of the wells, for example, at that time.

2 Q Thank you. Could you please explain  
3 why, in light of the conditions that are contained  
4 in staff's testimony -- let me start over again.

5 Can you please explain why, under the  
6 conditions that are included in the aquifer  
7 storage and recovery agreement, you have a concern  
8 about growth-inducing impacts associated with use  
9 of the water treatment facility?

10 A I have concern because I see that as a  
11 potential additional source of water. Certain, I  
12 think Mr. Hill's identified that there's an  
13 initial step of banking that water first. I think  
14 that's a potential benefit to the groundwater  
15 aquifer, but it still has the potential to lead to  
16 future growth-inducing impacts from additional  
17 water supplies being made available to Victor  
18 Valley Water District.

19 Q Are you referring to the fact that the  
20 water can be taken out of the ground once it's  
21 banked?

22 A Yes, certainly that if you've entered  
23 into a water storage agreement with the Mojave  
24 Water Agency, part of that agreement is how one  
25 can extract that water for future use. And I

1 think Mr. Hill also alluded to that.

2 Q Is staff opposed to VVWD recharging  
3 water?

4 A No.

5 Q Is staff opposed to allowing use of  
6 project facilities to be used for recharging water  
7 without examining any associated environmental  
8 effects?

9 A I believe that staff would think it  
10 would be appropriate for the Mojave Water Agency  
11 to go through an analysis similar to that that we  
12 have conducted for the proposed project to  
13 understand what the water -- how much water is  
14 actually stored in the aquifer, what's an  
15 appropriate dissipation rate, what credit Victor  
16 Valley should be given for banked water.

17 That's all something in an analysis that  
18 should be conducted as part of the water storage  
19 agreement.

20 Q So your opposition isn't to recharge,  
21 it's to allowing VVWD to increase its water supply  
22 without an analysis being conducted first?

23 A That's correct.

24 Q And with respect to the prohibition on  
25 selling facilities, does staff oppose VVWD having



1 the ability to sell facilities absolutely?

2 A I believe you meant High Desert, but --

3 Q Yes, thank you, excuse me.

4 A No, we do not oppose. In fact, there's  
5 a general condition of certification that deals  
6 with change of ownership of project facilities as  
7 a general condition that's included in all project  
8 licenses that if there is such a change in  
9 ownership the applicant must come back to the  
10 Energy Commission.

11 Q Thank you.

12 MS. HOLMES: Mr. Buell is available for  
13 cross-examination.

14 PRESIDING MEMBER LAURIE: Mr. Valkosky,  
15 I'd like to ask a question first.

16 EXAMINATION

17 BY PRESIDING MEMBER LAURIE:

18 Q Well, I really need an education, Mr.  
19 Buell. Your concern appears to be the need for an  
20 in-depth analysis on growth-inducing impacts. You  
21 argue that it is reasonably foreseeable that the  
22 district will utilize the recharge for service to  
23 its customers because you think that that's the  
24 commonsense conclusion of the circumstances at  
25 hand. Is that a fair statement?

1           A     That's what I heard Randy Hill say  
2     earlier today.

3           Q     Okay. So, in that regard, it's your  
4     position that you have to examine the growth-  
5     inducing impacts of the district suddenly getting  
6     some additional water supply, the amount is  
7     unknown.

8                     I thought I had a fair understanding of  
9     what a growth-inducing analysis, growth-impact  
10    analysis does, or is supposed to say. And my  
11    understanding would be a typical analysis says,  
12    okay, so you throw in 1000 acrefeet into a system,  
13    you have 1000 acrefeet to then utilize, what does  
14    that mean?

15                    Well, I think it means you can serve  
16    1000 more people. So, I'm kind of lost as to what  
17    kind of in-depth analysis you have to do, other  
18    than take a fact and reach a conclusion. The  
19    conclusion is if there's additional water supply,  
20    well, then you can serve X number of additional  
21    people. Why is it more complicated than that?  
22    What am I missing?

23           A     I don't think that you're missing  
24    anything. I think that what we need to do is to  
25    quantify what those environmental consequences

1 are. Exactly what does an additional water supply  
2 mean to future population growth in this basin --

3 Q Well, now, wait a minute, are you  
4 suggesting that you have to -- you think you have  
5 to do an environmental impact of adding 1000 more  
6 people to Victorville if it's consistent with  
7 their general plan?

8 A I think I have to evaluate what the  
9 reasonable consequences of this project are, and  
10 if that's a logical conclusion of what the actions  
11 this Commission is taking in licensing this  
12 project, then I think we have to evaluate those  
13 impacts.

14 BY HEARING OFFICER VALKOSKY:

15 Q But if, hypothetically, if 1000 more  
16 homes were built, environmentally does it make any  
17 difference whether the water was available by  
18 virtue of the facilities from this project, or as  
19 Mr. Hill said, if the district needs water they  
20 can just go sink a well.

21 A Again, I think I must reiterate, if it's  
22 a logical conclusion that this project is  
23 eliminating an impediment to that growth, that we  
24 must consider the consequence of eliminating that  
25 impediment.

1                   You know, to put some numbers on the  
2           magnitude of what we're talking about here is that  
3           let's presume for a moment that there's 4000  
4           acrefeet of excess capacity from the water  
5           treatment facility, and that all that would be  
6           available to Victor Valley for additional water  
7           supply.

8                   Assuming an average per capita  
9           consumption of water of approximately .38 acrefeet  
10          per capita, that's 12,000 people that this  
11          additional water supply would supply. And that's  
12          approximately one-quarter of the current  
13          population of Victorville. This is not a small  
14          amount of water we're talking about here.

15       BY PRESIDING MEMBER LAURIE:

16               Q     Doesn't Victorville have a general plan?

17               A     Yes.

18               Q     And doesn't any growth have to be  
19          consistent with that general plan?

20               A     Yes.

21               Q     And would not that general plan have had  
22          an environmental analysis?

23               A     I believe so.

24                       PRESIDING MEMBER LAURIE:   Okay.

25                       HEARING OFFICER VALKOSKY:   Mr. Thompson.

1                   MR. THOMPSON: Thank you. Just two  
2 short areas.

3                   CROSS-EXAMINATION

4 BY MR. THOMPSON:

5           Q     Mr. Buell, am I correct that VVWD may  
6 pump beyond its allowance and buy replacement  
7 water, replacement water's cheaper than storage  
8 and is put in after withdrawal. So am I right,  
9 that there aren't additional supplies, just better  
10 environmental solutions in that balance?

11          A     I think there's an additional potential  
12 supply of water there, as well as certainly that  
13 is one way of using the water. But it could also  
14 be used to provide additional supply to Victor  
15 Valley Water District.

16          Q     If there's an allocation obtained for  
17 that water?

18          A     An allocation from?

19          Q     Well, a part of your assumption is that  
20 there is additional water that is purchased out of  
21 the state water project, or somewhere else, right?

22          A     Yes.

23          Q     You mentioned the phrase eliminating  
24 impediments to growth, and reasonably foreseeable  
25 results. And it strikes me that that may be a

1 standard that you're using.

2 What I would like to do is to quote from  
3 four past Commission pronouncements and see if you  
4 believe that they're consistent with that  
5 standard.

6 Number one, the final staff assessment  
7 in the Sunrise Cogeneration Project. This was  
8 docketed, I believe, September 30th. This  
9 document points out that in addition to serving  
10 existing oil wells, this is an enhanced oil  
11 recovery project, roughly 700 new production and  
12 injection wells are expected to be constructed in  
13 this section.

14 And do you believe that providing steam  
15 for 700 new wells is not growth-inducing?

16 A I believe that the environmental  
17 consequences of those 700 wells that are being  
18 served by that project should be analyzed.

19 Q Were they in the Sunrise project a  
20 growth-inducing impact?

21 A I don't know from my own knowledge.

22 Q In the Pittsburgh District Energy  
23 Facility Commission decision, at page 20, the  
24 Commission summarizes under alternatives the  
25 objectives. And one of the objectives was to

1       assist the City of Pittsburg by building a long  
2       planned waterfront truck route, and to help  
3       Pittsburg realize it's economic development goals.

4               Do you believe that that is a growth-  
5       inducing impact?

6               A     I don't know that I'd call it  
7       necessarily, or characterize it as growth-  
8       inducing. It is certainly a consequence of the  
9       project that should be evaluated. The cumulative  
10      impacts, it's a reasonable foreseeable project  
11      that should be considered in the analysis.

12              Q     Do you know if the growth-inducing  
13      impacts were evaluated with regard to this?

14              A     I don't know of my own knowledge.

15              Q     In Sutter the Commission decision, and  
16      I'm afraid I don't have a date, let me quote from  
17      page 296, this is staff witness McCuen, quote,  
18      "The SBP provides significant power to the  
19      Sacramento Valley area, would help mitigate local  
20      systems voltage problems, and provide moderate  
21      power for load growth."

22                    Do you see the providing power for load  
23      growth being a growth-inducing impact coming from  
24      this transmission line?

25              A     I don't believe that providing

1 additional capacity to California's electricity  
2 system is necessary growth-inducing, since those  
3 actions are in response to demand, not creating  
4 demand.

5 Q Much like the water that Mr. Hill  
6 testified to?

7 A I would argue that the case in this case  
8 is that the water supply for Victor Valley Water  
9 District is coming prior to the increase in  
10 demand, rather than as a consequence.

11 Q I think the citizens of California would  
12 hope that the power would come before the demand,  
13 as well.

14 A Well, I can only quote what Mr. John  
15 Roberts' statement was, is that they're looking  
16 for additional growth in this community to respond  
17 to recover their economic base.

18 Q Do you know if the Sutter decision, or  
19 the staff in Sutter evaluated growth-inducing  
20 impacts from this line?

21 A I'm not aware if they did or not.

22 Q And finally, the LaPaloma Generating  
23 Project, the Commission decision earlier this  
24 year, quote, on page 2, "Finally applicant has  
25 chosen to place the project in a community which



1 welcomes it. The only public input which we  
2 received during the proceeding is favored  
3 construction of the LaPaloma Generating Project  
4 and the economic development it will bring to  
5 western Kern County area."

6 Do you know if the staff of the  
7 Commission evaluated growth-inducing impacts for  
8 that project?

9 A No, I'm not aware of that.

10 MR. THOMPSON: We have no more  
11 questions.

12 HEARING OFFICER VALKOSKY: Okay, I'd  
13 like the parties to be aware that in order to make  
14 transportation connections we're looking at  
15 somewhere between 30 and 40 minutes of hearing  
16 time left.

17 So to the extent that everybody can keep  
18 that in mind, I'd appreciate it.

19 Mr. Adams.

20 MR. ADAMS: Just one question.

21 CROSS-EXAMINATION

22 BY MR. ADAMS:

23 Q Related to questions of other witness,  
24 Mr. Buell, do you remember, in drafting Soil and  
25 Water 6, the provision that 1000 acrefeet remain

1 in the bank at the closure of the project?

2 A Yes, I do.

3 Q Can you explain the purpose for that  
4 provision?

5 A My understanding is that 1000 acrefeet  
6 was a buffer to insure that we had more than  
7 enough mitigation for the project impacts.

8 MR. ADAMS: Thank you.

9 HEARING OFFICER VALKOSKY: Mr. Ledford.

10 MR. LEDFORD: Thank you.

11 CROSS-EXAMINATION

12 BY MR. LEDFORD:

13 Q Mr. Buell, it's true that the Commission  
14 has only studied the impacts of this project based  
15 on a 30-year project, is that true?

16 A That's correct.

17 Q And it's also true that you've only  
18 considered the use by the project of 4000 acrefeet  
19 for evaporative cooling and 13,000 acrefeet of  
20 banking, is that also true?

21 A That is correct.

22 Q And you have not considered the use of  
23 water by the Victor Valley Water District, 3500 to  
24 4000 acrefeet, for the five years to the 25 years,  
25 even within your current environmental analysis?

1           A     I would argue that the conditions that  
2     we've put forth in condition 5 and 17 would limit  
3     VVWD to not increasing production above the  
4     baseline, therefore there would be no  
5     environmental consequences of that water use.

6                     The things that we have not examined are  
7     VVWD's use of those wells once the project closes.  
8     We have not looked at VVWD's use of the water  
9     treatment facility.

10           Q     I'm sorry, I didn't ask that question  
11     quite right. There's 3500 acrefeet of surplus  
12     capacity within the plant in year five or six to  
13     year 30, would that be a correct statement?

14           A     Yes.

15           Q     And if I heard Randy Hill's testimony  
16     correctly, the water that is going to come out of  
17     the plant, out of the treatment plant, is going to  
18     be drinking water standards?

19           A     It's my understanding --

20           Q     Be treated to drinking water standards?

21           A     That's my understanding, yes.

22           Q     And there is no reason why that water  
23     cannot be put directly into the municipal system?

24           A     There's no reason that I would believe  
25     that it could not be.

1           Q     And in fact, in order for Victor Valley  
2     Water District to use the wells as he proposes,  
3     the project facilities, the project waterlines  
4     have to be drinking water standard water lines?  
5     They have to be able to contain water that is  
6     treated to drinking water standards?

7           A     That would be correct.

8           Q     And so my question to you again is has  
9     your study of the surplus capacity for the period  
10    that you've actually studied the project for  
11    included the availability and use of that water at  
12    3500 to 4000 acrefeet?

13          A     I can only repeat my answer again, that  
14    we have not studied the implications of VVWD's  
15    access to the treated water from the treatment  
16    facility.

17          Q     And just one more time. When we were  
18    here in hearings in October and November the  
19    proposal at that time, the draft contracted at  
20    that time, it was your understanding that the  
21    facilities were going to be project facilities,  
22    and their ability to use those facilities was only  
23    going to be on an emergency basis?

24          A     That was the testimony of Mr. Hill that  
25    I recall, yes.

1           Q     And from those hearings to this point,  
2           sir, have we had a workshop where all the parties  
3           were involved in discussing these types of -- I  
4           mean the conditions have changed now, I think  
5           three times since then, but has there been any  
6           workshop where all the parties were invited to  
7           attend and participate?

8           A     No, there has not.  Although staff did  
9           circulate its proposed changes to add  
10          conditions -- modify condition 5 and add  
11          conditions 17 and 18 to all the parties.  That was  
12          filed to the POS list, so all parties had an  
13          opportunity, and staff asked for comments on those  
14          proposed conditions from all parties.

15          Q     And if I could just go to condition soil  
16          and water 1, which I thought we had sort of  
17          thrashed out last time, previously it said may be  
18          pumped and may not operate, and we talked about  
19          the word shall being put in.  I thought everybody  
20          agreed to the word shall.

21                     And this word that's put in is can, but  
22          it's not underlined or struck through, so I'm not  
23          sure how that all happened.

24          A     Which condition are you referring to?

25          Q     Soil and Water 1, paragraph C, page 6.

1           A     Yeah, I do recall at the hearing on the  
2     27th --

3           Q     I'm sorry, I'm not in the right place  
4     here, I guess.

5           A     I believe you are, you're on the third  
6     line where it says the project cannot operate?

7           Q     Right.

8           A     And I think the comment, as I recall at  
9     the hearing on the Presiding Member's Report on  
10    January 17th, was that should have been changed to  
11    shall. And I note that it has not here. It's  
12    can. I think it said should not operate  
13    previously.

14                   I think that was an oversight on staff's  
15    point. That should read shall not operate.

16                   HEARING OFFICER VALKOSKY: Mr. Ledford,  
17    I'd also note the Committee recalls that. And  
18    remember that these are only staff-proposed  
19    conditions. Certainly it would be the Committee's  
20    indication that to the extent this condition is  
21    carried forward that it read shall.

22                   MR. LEDFORD: And only for the record at  
23    this point, before I leave this witness, there's  
24    been an indication that I agree with staff's  
25    conditions.

1           I've tried to participate in the process  
2           to the extent that I can. I have a strong  
3           disagreement on the consumptive use of water. And  
4           regardless of the outcome of these hearings I will  
5           proceed with those.

6           So, with that clarification, I  
7           appreciate the opportunity to offer input into the  
8           conditions.

9           Thank you, Mr. Buell.

10           HEARING OFFICER VALKOSKY: Thank you,  
11           Mr. Ledford.

12                               EXAMINATION

13           BY HEARING OFFICER VALKOSKY:

14           Q     Mr. Buell, before redirect, did you  
15           indicate that VVWD would own the water treatment  
16           facilities?

17           A     No, I did not.

18           Q     Okay, were you operating under that  
19           assumption?

20           A     No, I was not.

21           Q     Thank you. So, I mean you had nothing  
22           to contradict Mr. Hill's statement that they will,  
23           in fact, not own the water treatment facilities?

24           A     No, I think that part of the problem  
25           comes from the definition that staff used in its

1 testimony for what constitute project water  
2 facilities. We included the water facilities in  
3 our definition of project facilities.

4 And clearly, reading the storage  
5 agreement, that it's not envisioned as being one  
6 of the project facilities as defined in that  
7 document.

8 Q Okay, fine, that comports with my  
9 understanding of the aquifer storage agreement,  
10 too.

11 HEARING OFFICER VALKOSKY: Redirect?

12 MS. HOLMES: I don't believe I have any  
13 redirect.

14 HEARING OFFICER VALKOSKY: Okay, just  
15 one question, Mr. Buell.

16 BY HEARING OFFICER VALKOSKY:

17 Q Do you view the four changes that you've  
18 suggested in your proposed conditions as equally  
19 important to preventing any growth-inducing  
20 impacts?

21 A Yes.

22 Q Okay, so there is -- do you also view  
23 them as a package of conditions, or are they  
24 appropriate in stand-alone form? In other words,  
25 could they be selected or de-selected on an



1 individual basis?

2 A I think the Committee has every right to  
3 select what they believe are the appropriate ones,  
4 and exclude those that they have a basis to  
5 exclude.

6 HEARING OFFICER VALKOSKY: Okay, thank  
7 you. Are there any other questions for Mr. Buell?

8 Thank you, Mr. Buell.

9 Mr. Ledford.

10 MR. LEDFORD: I would call Jack  
11 Beinschroth to testify.

12 HEARING OFFICER VALKOSKY: Excuse me,  
13 before you do that, Ms. Holmes, does that conclude  
14 staff's case?

15 MS. HOLMES: Yes, at this point we'd  
16 like to move exhibit 176 and 146A into the record.

17 HEARING OFFICER VALKOSKY: Is there  
18 objection? No objection, they'll be admitted into  
19 evidence.

20 I'm sorry, go ahead, Mr. Ledford.

21 MR. LEDFORD: Call Jack Beinschroth. I  
22 would like to move to reconsider the issue of the  
23 questions relative to the Mojave Water Agency and  
24 State Water Resources Control Board on the basis  
25 that issues relative to overdraft and ramp-down

1 and balancing the water basin has been testified  
2 to by Mr. Andy Welch, by Mr. Randy Hill and Mr.  
3 Buell.

4 Questions have been asked directly on  
5 those topic areas by Mr. Thompson and by members  
6 of the Commission.

7 I would think that precluding what  
8 limited number of questions that we have in this  
9 area from the record would be prejudicial based on  
10 the testimony that's been allowed thus far today.

11 HEARING OFFICER VALKOSKY: Okay, you're  
12 referring to exhibit 168, your prepared testimony,  
13 what we've identified as exhibit 168?

14 MR. LEDFORD: Correct, per Mr.  
15 Beinschroth.

16 HEARING OFFICER VALKOSKY: Okay. Are  
17 there comments from any of the other parties? Mr.  
18 Thompson?

19 MR. THOMPSON: I think our position is  
20 with regard to those questions and answers that  
21 have been discussed here today, I don't think we  
22 would have any objection of letting them in for  
23 the value that they represent.

24 HEARING OFFICER VALKOSKY: Okay, other  
25 parties? Staff? Okay, Mr. Ledford, applicant has

1       essentially removed its objection. I would,  
2       however, caution you that the Committee will not  
3       accept those portions of the testimony dealing  
4       with the election and the political matters.

5               MR. LEDFORD: And with that  
6       clarification, and also we don't intend to ask Mr.  
7       Beinschroth any follow-on questions in those  
8       areas. We will focus only on the growth-inducing  
9       impacts.

10              HEARING OFFICER VALKOSKY: Okay,  
11       proceed.

12              MR. LEDFORD: Has Mr. Beinschroth been  
13       sworn?  
14       Whereupon,

15                      JACK BEINSCHROTH  
16       was called as a witness herein and after first  
17       being duly sworn, was examined and testified as  
18       follows:

19                      DIRECT EXAMINATION

20       BY MR. LEDFORD:

21              Q     Mr. Beinschroth, is the prepared  
22       testimony that's before the Committee testimony  
23       that's either been prepared by you or prepared at  
24       your direction?

25              A     Yes.

1 Q And have you reviewed this testimony?

2 A Yes.

3 Q And is this your testimony?

4 A Pardon?

5 Q Is this your testimony?

6 A Yes, it is.

7 Q And do you wish to make any changes,  
8 modification or additions to the testimony?

9 A No, I don't.

10 Q Okay, I would like to just have you  
11 tell us in relation to the oversizing of the  
12 infrastructure, how you calculated what the  
13 capacity of the 24-inch pipeline was.

14 A Well, the hydraulic flow of a 24-inch  
15 pipeline based on a normal psi, I used 50, will  
16 give you 14,000 acrefeet a year, based on a yearly  
17 basis. Is this what your striving for, I mean --

18 Q That's correct. And your testimony is  
19 that the pipeline is oversized for producing  
20 enough water to provide for 8000 acrefeet of water  
21 to a water treatment facility and for evaporative  
22 cooling on the treatment plant, is that correct?

23 A Well, if that's -- yes.

24 Q Very good. And is it your testimony  
25 that you believe that the oversizing is nearly

1 twice what is actually required?

2 A Well, 14, 8, practically twice, yes.

3 Q Now you also testified in your prepared  
4 testimony about growth-inducing impacts. Is it  
5 your testimony that having this surplus capacity  
6 in both the supply pipelines to the project site,  
7 and in the pipelines that go to the wells and the  
8 district facilities, would provide growth-inducing  
9 impacts?

10 A Well, there's sufficient additional  
11 water that would be available that could produce  
12 growth impact. I mean there's water that's way in  
13 excess of what the plant would require designed  
14 into the pipelines, if that's what you're  
15 inferring.

16 Q Correct. And your testimony relative to  
17 these pipelines was deduced, I guess, from  
18 evaluation of figure 1 from exhibit 65, which has  
19 been blown up as exhibit A to your testimony?

20 A You referring to the size of the pipe?

21 Q Correct.

22 A Well, a 240-inch line, I think it was on  
23 page 214, U.S. Fish and Wildlife draft or  
24 environmental impact statement, they indicated a  
25 24-inch line.

1                   And conversation subsequent to that  
2           indicate that they proposed a 24-inch line to  
3           supply the plant from the aqueduct.

4                   The 18-inch line from the treatment  
5           plant, that was a proposal that was made by  
6           Victorville to Mojave Water Agency some time ago.  
7           So that size has been established.

8           Q     Okay.

9           A     Those are two basic supply lines that  
10          could be used.

11          Q     All right. With that testimony, is  
12          there any other item relative to growth-inducing  
13          impacts that you believe that the Committee should  
14          be aware of?

15          A     Growth-inducing impacts. Well, they  
16          have the possibility or let's say the availability  
17          of inducing additional water to the storage, and  
18          then they also have the ability to pump this out,  
19          which would give them excess water, which would be  
20          made useable by the water district.

21                  And excess water comes back to growth-  
22          inducement. And as I understand it, there has  
23          been no environmental impact study made over and  
24          above the 4000 acrefeet that they originally  
25          requested.

1                   So I would say it would definitely be a  
2 growth-inducement.

3           Q     Thank you.

4                   MR. LEDFORD:  No further questions.

5                   HEARING OFFICER VALKOSKY:  Thank you.

6     Mr. Thompson?

7                   MR. THOMPSON:  No questions.

8                   MS. HOLMES:  No questions.

9                   MR. ADAMS:  No questions.

10                  HEARING OFFICER VALKOSKY:  Okay, sir,  
11 thank you very much.  You're excused.

12                  MR. BEINSCHROTH:  No you got about 20  
13 minutes before you catch your plane.

14                   (Laughter.)

15                  HEARING OFFICER VALKOSKY:  Proceed, Mr.  
16 Ledford.

17                  MR. LEDFORD:  Call Bob Almond, please.

18     And I would have the same motion for Mr. Almond  
19 relative to issues that are noncampaign issues.

20                  HEARING OFFICER VALKOSKY:  Okay, to  
21 the -- Mr. Thompson.

22                  MR. THOMPSON:  You're catching me off  
23 guard here.

24                   Yes, if the same restriction applies,  
25 it's fine.

1 HEARING OFFICER VALKOSKY: Okay.

2 Nothing from the other parties? Okay. The same  
3 exclusion as to the campaign, the election issues  
4 will apply to exhibit 172.

5 Would you swear the witness, please.

6 Whereupon,

7 BOB ALMOND

8 was called as a witness herein and after first  
9 being duly sworn, was examined and testified as  
10 follows:

11 MR. ALMOND: The first thing I would  
12 like to start off with is I'm not here as a member  
13 of the Mojave Water Agency. I'm here as a private  
14 citizen and concerned taxpayer.

15 MR. LEDFORD: Thank you, Mr. Almond.

16 DIRECT EXAMINATION

17 BY MR. LEDFORD:

18 Q The prepared testimony that's before the  
19 Commission today, was it prepared by you or at  
20 your direction?

21 A Yes.

22 Q And have you reviewed this testimony?

23 A Yes, I have.

24 Q And is this testimony yours?

25 A Yes, it is.



1           Q     And do you wish to make any  
2     modifications, changes or additions to this  
3     testimony at this time?

4           A     No, I don't.

5           Q     I would just like to go to where we were  
6     looking at question 12, and we're talking about  
7     the -- we're here today to talk about the contract  
8     for the Victor Valley Water District.

9                     And to the extent that you can summarize  
10    your testimony relative to growth-inducing impacts  
11    for the Committee, we'd appreciate that.

12          A     Okay, thank you. I've reviewed the  
13    contract and related exhibits, especially the  
14    exhibit that shows the various waterlines. I can  
15    see from the waterline exhibit that these lines  
16    are fully over-sized.

17                    I am concerned that the objective of the  
18    Victor Valley Water District and the City of  
19    Victorville is much greater than what they've  
20    stated in this approval process.

21                    First, the water treatment plants are  
22    modular and can be easily added onto for further  
23    capacity. Assuming that the High Desert Power  
24    Project water treatment plant is designed to treat  
25    only 4000 acrefeet of water per year, after the

1 initial banking, the plant would be idle for  
2 sufficient periods of time. At a minimum this  
3 would amount to about 3500 acrefeet per year, if  
4 the banking project works as they anticipate.

5 This water would be used for development  
6 outside the scope of the environmental studies  
7 conducted by the California Energy Commission.  
8 The water you have considered for use is directly  
9 on the power project.

10 Since they would have generated a  
11 surplus capacity of at least 3500 acrefeet of  
12 treated water, this action, if approved would be a  
13 growth-inducement for the project area, not  
14 studied at this present time.

15 I am very concerned about the oversizing  
16 of the waterlines. I'm also concerned about the  
17 direct connection with Victor Valley Water  
18 District, who would have a direct connection with  
19 the California aqueduct.

20 Q Does that conclude your testimony?

21 A Yes, it does.

22 MR. LEDFORD: No further questions.

23 HEARING OFFICER VALKOSKY: Okay, Mr.  
24 Thompson?

25 MR. THOMPSON: No questions.

1 MS. HOLMES: No questions.

2 MR. ADAMS: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Almond,  
4 thank you very much.

5 MR. LEDFORD: I have nothing further.

6 HEARING OFFICER VALKOSKY: I'm sorry,  
7 Mr. Ledford?

8 MR. LEDFORD: Other than a closing  
9 argument or statement, if we have an opportunity,  
10 I have nothing further.

11 HEARING OFFICER VALKOSKY: Okay, would  
12 you like to move your exhibits 168 --

13 MR. LEDFORD: Yes, I would.

14 HEARING OFFICER VALKOSKY: -- and 172?  
15 Is there objection?

16 MR. THOMPSON: None.

17 MR. LEDFORD: 168, 169, 170, 172 and  
18 174.

19 MR. THOMPSON: I think 170 was reserved.

20 HEARING OFFICER VALKOSKY: 170 was  
21 reserved. I was referring to 168, which is the  
22 prepared testimony of Mr. Beinschroth and 172,  
23 which was the prepared testimony of Mr. Almond.  
24 Let's take those at this time. Is there any  
25 objection to the admission of those exhibits?

1 MS. HOLMES: None.

2 HEARING OFFICER VALKOSKY: I take it  
3 there is none. Those exhibits are entered into  
4 the evidentiary record.

5 Your next exhibit, Mr. Ledford, was?

6 MR. LEDFORD: That would be exhibit B,  
7 which is the -- exhibit A to the prepared  
8 testimony, blown up exhibit from Victor Valley  
9 Water District, which is what Mr. Beinschroth used  
10 to calculate the size of the pipelines.

11 HEARING OFFICER VALKOSKY: Okay, and  
12 that was essentially --

13 MR. LEDFORD: That was actually off of  
14 exhibit number 65.

15 HEARING OFFICER VALKOSKY: A  
16 reproduction of exhibit 65.

17 MR. LEDFORD: Correct.

18 HEARING OFFICER VALKOSKY: So that it  
19 is --

20 MR. LEDFORD: It is a portion of.

21 HEARING OFFICER VALKOSKY: -- it is a  
22 portion of the record. Is there any objection to  
23 receiving the blown-up version?

24 MS. HOLMES: None.

25 MR. ADAMS: No.

1 HEARING OFFICER VALKOSKY: None?

2 MR. THOMPSON: No.

3 HEARING OFFICER VALKOSKY: Okay, that  
4 will be admitted.

5 Next, Mr. Ledford.

6 MR. LEDFORD: Exhibit 170, which is a  
7 part of Mr. Beinschroth's prepared testimony  
8 relative to the size and capacity of the sewage  
9 treatment plant pipeline. It's also been referred  
10 to in other portions of evidentiary material and  
11 testimony in today's hearings.

12 HEARING OFFICER VALKOSKY: Okay, Mr.  
13 Thompson?

14 MR. THOMPSON: I'm a little fearful that  
15 this exhibit which describes something that is not  
16 a part of this project and has no connection to it  
17 could muddy the record. And I guess I would  
18 object on that ground.

19 HEARING OFFICER VALKOSKY: Ms. Holmes?

20 MS. HOLMES: No objection.

21 MR. ADAMS: No objection.

22 HEARING OFFICER VALKOSKY: I'll admit  
23 it. I'm not sure it will muddy the record any  
24 more than it has already been muddied.

25 (Laughter.)

1                   MR. CARROLL: We set a fairly low  
2                   standard here.

3                   (Laughter.)

4                   HEARING OFFICER VALKOSKY: At any rate,  
5                   we'll receive it. I agree with Mr. Ledford, that  
6                   it has been referred to numerous times.

7                   MR. LEDFORD: And then exhibit number  
8                   174, which is exhibit B to the direct testimony of  
9                   Bob Almond. It's entitled, consumptive use study.  
10                  His testimony covers that it's also been discussed  
11                  other times in this hearing today.

12                  HEARING OFFICER VALKOSKY: Mr. Thompson?

13                  MR. THOMPSON: No objection.

14                  MS. HOLMES: No objection.

15                  MR. ADAMS: No objection.

16                  HEARING OFFICER VALKOSKY: Without  
17                  objection, it's admitted.

18                  Does that conclude your presentation,  
19                  Mr. Ledford?

20                  MR. LEDFORD: That concludes it.

21                  HEARING OFFICER VALKOSKY: Okay. Are  
22                  there any members of the public, if I could just  
23                  have a show of hands, that wish to offer comment  
24                  on any of the matters here discussed?

25                  Okay, sir, would you like to approach,

1       make sure I give you a chance --

2               MR. LEATZ:  My name is Ron Leatz,  
3       L-e-a-t-z.  I basically have two things I'd like  
4       to address to the Commission.

5               Number one, I'd like to thank you for  
6       spending your time and coming down on this  
7       project.  I know you probably know the road to  
8       Victorville better than the locals.

9               I think what you have to remember is you  
10      represent the taxpayers of the State of  
11      California, and this represents not just the high  
12      desert, it represents all of California.

13              I think the project that goes on and on  
14      and on basically has one problem, the problem is  
15      water.  I think the project, as it's proposed,  
16      should be rejected.  And the dry cooling method,  
17      if that's the way they want to go, resubmit it and  
18      see if it works that way.

19              The second thing I would like to talk  
20      about is something that you have not wanted to  
21      talk about all day.  I don't expect to read all of  
22      this information, but there was a committee formed  
23      by the Mayor of Victorville, called the Victor  
24      Valley Economic Committee.

25              I'm going to summarize it real quick:

1 The people that were elected to the Mojave Water  
2 Agency, which I'm involved with unfortunately  
3 because they are the water purveyor over the  
4 Victor Valley Water District, received 67 percent  
5 of their campaign money from the High Desert Power  
6 Project.

7 I had one vote in the polls, they used  
8 that money. And the three people that were  
9 elected to the Victor Valley Water District each  
10 received \$2500. This is now public record, comes  
11 from Sacramento, anybody can get it. I have it.  
12 I'd like to leave it with the clerk. You can look  
13 at it, you can throw it away. But it's awful  
14 amazing that they spent I think it was \$72,000 to  
15 get the right people on the water boards when  
16 water seems to be the issue.

17 HEARING OFFICER VALKOSKY: Sir, if you'd  
18 like to submit that, if you'd give it to me I'll  
19 enter it into our docket.

20 MR. LEATZ: Thank you. I also have a  
21 newspaper article that kind of summarizes this, if  
22 you don't believe the reporter, throw it away.

23 Thank you.

24 HEARING OFFICER VALKOSKY: Would you  
25 like a copy of the article docketed, too?



1 MR. LEATZ: Pardon?

2 HEARING OFFICER VALKOSKY: Would you  
3 like a copy of the article docketed, also?

4 MR. LEATZ: Yes, please.

5 HEARING OFFICER VALKOSKY: Okay. Ma'am.

6 MR. LEATZ: Could I make one last  
7 comment?

8 HEARING OFFICER VALKOSKY: Oh, I'm  
9 sorry, sir, sure.

10 MR. LEATZ: We've had testimony today,  
11 and of course you don't know the people involved.  
12 As an example, the city manager comes up and says,  
13 this is the greatest thing since canned soup.  
14 That's his job. But he does not live in the City  
15 of Victorville. He does not live in the Victor  
16 Valley Water District.

17 Mr. Huber, whose president of the water  
18 district, came up and said he's had no complaints.  
19 There's been more than one complaint. The manager  
20 of the water district says there have been  
21 complaints. So just kind of unfortunately weigh  
22 all this out. You're only hearing some parts of  
23 the story.

24 Thank you very much.

25 HEARING OFFICER VALKOSKY: Thank you,

1       sir.

2                   MS. FLINT:  Hi, I'll be quick.  My  
3       name's Terry Flint.  I'm on the Victor Valley  
4       Water District Board.  I, too, would like to thank  
5       you for coming today and spending your whole day  
6       here.

7                   I'd like to clarify, before I forget,  
8       something Mr. Leatz just said.  Our manager stated  
9       that out of our 15,000 customers not one of our  
10      customers has complained.  That was Mr. Huber's  
11      testimony, and that was our manager's testimony.

12                  We feel this is an excellent project.  
13      It will benefit the taxpayers of this valley by  
14      VVWD receiving the wells, the water treatment  
15      plant, which we don't have.  And we would be able  
16      to spend the money we do have to look at other  
17      projects if we receive these wells.

18                  I hope that this project does go  
19      through.  I also have heard some concern today, I  
20      believe from Mr. Buell, about VVWD having control  
21      over the wells, or the High Desert Power Project  
22      having control over the wells.

23                  Victor Valley Water District has an  
24      excellent reputation.  And I don't understand why  
25      anyone would have trouble with us having control

1 of the wells. I would think that that would be a  
2 plus, that if, in the end, everyone knew that we  
3 would be taking ownership. I would think that  
4 that would be a benefit.

5 And I hope that this project makes it.  
6 Thank you very much.

7 HEARING OFFICER VALKOSKY: Thank you.  
8 The Committee will consider your comments.

9 Anything else from anyone here present?

10 Okay, with that we'll close the record  
11 on the topic of water agreement and growth-  
12 inducing impacts.

13 Due to the hour we find it necessary to  
14 do away with an opportunity for a closing  
15 statement. However, the Committee will extend the  
16 parties a period of two weeks to submit any final  
17 statements, written argument, in the form of  
18 written briefs. Okay?

19 MR. LEDFORD: My recollection, Mr.  
20 Valkosky, is that we did have a closing argument  
21 when the record was closed at the last hearing.  
22 That's my recollection.

23 HEARING OFFICER VALKOSKY: That's  
24 correct. Okay, the briefing, by my count, will  
25 extend until March 7th. The intention is two

1 weeks from today, I think that's March 7th. If  
2 it's not, go for the two-week date.

3 And with that, unless there are any  
4 other matters to discuss, -- I'm sorry, Mr.  
5 Thompson?

6 MR. THOMPSON: What topics does the  
7 Committee anticipate covering in the briefing?

8 HEARING OFFICER VALKOSKY: The topic of  
9 chief concern to the Committee is the matters  
10 concerning the water agreement and growth-inducing  
11 impacts.

12 Specifically, would like to address the  
13 necessity for consistency of the conditions of  
14 certification with the provisions of the water  
15 agreement, the necessity for the provisions  
16 proposed by staff in their testimony, the four  
17 additional conditions. And the other matters  
18 generally addressed under the water agreement/  
19 growth-inducing impacts as discussed at today's  
20 hearing. Okay?

21 MR. THOMPSON: Thank you.

22 HEARING OFFICER VALKOSKY: Any other  
23 questions?

24 With that, again, I thank you all for  
25 your attendance and participation. And we're

1 adjourned. Thank you.

2 (Whereupon, at 4:05 p.m., the hearing  
3 was adjourned.)

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## CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Hearing; that it was thereafter  
transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
Hearing, nor in any way interested in the outcome  
of said Hearing.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 24th day of February, 2000.

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